

of Zimmerman Reed in Minneapolis, and I'll be taking your deposition today in the matter of Arch v. American Tobacco Company.

Would you please state your name, your full name, and spell it for the record.

MR. BEACH: Excuse me, Mr. Pennell. Before answering, I'd like to just, Mr. Hopper, make a quick statement for the record.

This case is also being attended -- this deposition, excuse me, is also being attended by Mr. Gottlieb in connection with the case Hoskins versus R.J. Reynolds Tobacco Company, et al. We have agreed -- and if I misstate our agreement, Mr. Gottlieb, please correct me in any way. But we have agreed that, for the purposes of this deposition, Mr. Gottlieb is attending on the condition that he will sign the protective order that applies in the Arch case. In addition, the court reporter will sign the protective order that applies -- it's the Confidentiality Agreement A, I believe, is its actual designation. And we will do that at the lunch break when we can get a notary in here.

Is that agreeable, Mr. Gottlieb?

MR. GOTTLIEB: That's agreeable. We've also agreed that I'll be bound by the Arch protective order, until such time as an order in the New York case of Hoskins goes into effect.

MR. BEACH: That's correct.

Thank you. Continue.

BY MR. HOPPER:

Q. Why don't you go ahead and state your name so we have the deposition --

A. It's George Clifton Pennell, P-E-N-N-E-L-L.

Q. Thank you.

MR. HOPPER: I need to put an entry into the record as well, that plaintiffs reserve the right to recall the witness, based on the fact that, the day that we noticed the deposition, we learned from Mr. Belasic defense counsel has some 320,000 documents to produce, pursuant to a Request for Production of Documents in this matter. And, therefore, we're going to begin the review process in those documents between all counsel and, if necessary, then we'll reserve the right to recall this witness at a later time.

MR. BEACH: If I might just briefly state for the record, Mr. Hopper, I don't know what agreements or arrangements you've made with Mr. Belasic, so I won't make any representations with respect to them. I would assume that we have the mutual interest of disrupting Mr. Pennell's business duties as little as possible and would hope that he can be -- provide information sufficient that would prevent that from happening.

MR. HOPPER: I think that it's probably important to add that the agreement was reached with Mr. Belasic and, even though he's not present to acknowledge that agreement, the record will stand for itself. And it should serve as a representation it was made with Mr. Belasic, and we'll proceed on that basis. Should any other matter or issue arise relative to that, Mr. Beach

can take it up with his co-counsel Mr. Belasic.

MR. BEACH: Just so the record --

MR. HOPPER: Fair enough?

MR. BEACH: That's fair enough.

Just so the record is clear that I can't speak to any of the representations that have been made concerning the extent of any agreement.

MR. HOPPER: Sure.

MR. BEACH: Go ahead.

BY MR. HOPPER:

Q. Mr. Pennell - if I'm pronouncing your name correctly --

A. That's correct.

Q. -- I hope so - would you please state your date of birth.

A. 2/16/57.

Q. And where were you born?

A. In Forsyth County, North Carolina.

Q. And is that somewhere nearby Winston-Salem or --

A. Winston-Salem is in Forsyth County.

Q. All right. Did you spend most of your young life here, growing up in Winston-Salem?

A. Yes, I did.

Q. And where did you attend high school?

A. R.J. Reynolds.

Q. And did you go to college here?

A. Yes, I did.

Q. And where would that be?

A. Wake Forest University.

Q. After Wake Forest, did you do any postgraduate education work?

A. No, I did not.

Q. So your highest degree is a bachelor of science degree?

A. A bachelor of arts.

Q. And what was that obtained in?

A. Religion and political science.

Q. What types of subjects did you study under that type of a major?

A. I'm not sure I'm following your question.

Q. What type of courses did you study for a major in religion and political science?

A. Well, my primary major in religion there was, you know, Old Testament, New Testament. Courses that had -- were part of that requirement. There were theory classes, ethics classes, et cetera.

Q. What kind of ethics classes did you take?

A. Ethics classes similar to the euthanasia issue, right to live and die, would be one that comes to mind.

Q. Medical ethics, things like that?

A. I wouldn't call it medical ethics.

Q. No, I mean, in addition to euthanasia.

A. No. It was just -- that would be an example.

Q. Any social ethics courses?

A. Not that I recall.

Q. Did you study comparative religions?

A. Yes. Had some requirements in comparative religions.

Q. Did you ever entertain the thought of going to seminary?

A. No, I did not.

Q. Have you had any additional postgraduate courses or training in any other types of subjects since you graduated from college?

A. No.

Q. What year did you graduate from college?

A. 1979.

Q. Once you completed your college education, did you seek employment right away?

A. Yes, I did.

Q. And where did you first go to work?

A. I started as a sales rep with R.J. Reynolds Tobacco Company.

Q. Would that be here in Winston-Salem?

A. I was a sales rep in South Carolina. Florence, South Carolina.

Q. And what duties comprised your first job with RJR?

A. I was responsible, within my assigned territory in South Carolina, for the distribution, promotion, and inventory, and other selling functions of R.J. Reynolds Tobacco Company's products.

Q. Was that exclusively cigarettes or were there other products involved?

A. At that time we also had smoking and chewing -- pipe tobaccos and chewing tobaccos.

Q. Was your job exclusively limited to sales or did you get involved in any other aspects of the company at that point?

A. No, it was exclusively limited to sales.

Q. Did you interview or seek employment with any other companies or organizations right out of college? Other than RJR.

A. Not that I recall, no, sir.

Q. Did you have a personal interest to work for RJR for some reason?

A. No, sir. I was offered a job as a sales rep with R.J. Reynolds and, upon graduating from college, decided to pursue that opportunity.

Q. Had any of your family members -- immediate family members ever worked for RJR?

A. No, sir.

Q. Any relatives at all ever work for RJR?

A. Not that I'm aware of, no, sir.

Q. How long did you work in this sales position? From 1979, was it --

A. Correct.

Q. -- say, later '79?

Until when?

A. From June of '79 through 1981, I believe.

Q. So, almost two years?

A. Correct.

Q. Then did you change jobs at that point?

A. No. I moved to a different job with R.J. Reynolds.

Q. And what job would that be?

A. I moved into an entry level management position in Atlanta.

Q. And what area of the company was that management position?

A. That was still in sales department.

Q. What comprised your duties and responsibilities in that job?

A. For the first six months, I was a vending manager in the Atlanta regional office.

Q. And can you tell me -- give me some further description about what that job involved?

A. I called on the vendors that were based out of that particular division or territory and was responsible for overseeing our contract placements and guidelines with those vendors.

Q. And what all types of vendors were included in that territory?

A. It varied. The majority of them were in the business, the vending machine business; some exclusively to cigarette vending machines. The majority of them had, as I recall, other vending operations, well, snacks, what have you.

Q. So when you say "vender," you almost literally mean vending in the strictest sense of vending machines, then?

A. That's correct, yes.

Q. You didn't call on convenience stores or gas stations or things -- retail outlets such as that?

A. Not in that capacity, no, sir.

Q. Were these distributors who held vending machines as part of their properties, then? Is that a fair way to describe them?

A. I'm sorry, I'm not following.

Q. Were they, the businesses that you called on, distributors in the -- in the distribution of various types of products, snacks, cigarettes, things of that nature? Or were -- and then they held these vending machines in various locations as properties?

A. Some did that, had -- a distributor was their -- their parent company, if you will, and a part of that was the vending operation. Others, however, were strictly vending companies and had those vending machines and -- that they owned and they placed.

Q. So was your job principally focused upon taking orders and overseeing the contracts associated with these various customers?

A. Essentially, what I was accountable for was trying to negotiate as much space for R.J. Reynolds in those vending machines for our products, as well as any signage opportunities within those machines that there might be.

Q. But you actually were selling product to these -- to these vendors, correct?

A. No. The majority of the vendors, if not all of them, bought their products from a wholesale distributor.

Q. Okay. That's the distinction I was looking for.

So you really served almost an ancillary type role to the sales function at that point; is that a fair way to describe it?

A. No, I don't think that would be -- be fair at all. It was --

Q. Let me try it one other -- one other angle, then. You weren't directly selling product, then, to these vendors, you were supporting those -- those sales in some capacity, correct?

A. We -- I did not -- we did not actually sell

our products directly to a distributor, unless they were what is called a direct account, which would mean they would buy directly from the company.

Q. I understand.

And that job, again: In 1981, based in Atlanta. And how long were you in that position?

A. About six months, I believe.

Q. And what prompted the change?

A. The change was, as I recall it, prompted when somebody else in that market was moved to another market and I assumed their position.

Q. And what position would that have been?

A. Assistant division manager.

Q. Okay. Still within the management function at RJR, then, correct? Sales management, I mean.

A. Yes, sir.

Q. Were you still based in Atlanta at that point?

A. Yes, sir.

Q. So would it have been someone higher than you or was it a lateral move for you to take at that point?

A. That was essentially a lateral move for me.

Q. What -- did you learn that this job was open and you pursued it, or did the Company actually approach you? Do you recall?

A. They approached me.

Q. What new duties or responsibilities comprise the assistant division manager job?

A. Reported to the division manager and assisted the division manager in -- in training development and oversight of the sales representatives that reported to that division manager.

Q. So, in trying to get the picture of how your career developed, in the capacity as oversight of sales reps, would that have then been a job that someone would have had over you when you first started at the company as a sales representative?

A. That's correct.

Q. So, for you it was a promotion to have gone through these two steps, then, to get to where you were six months into 1981 or so, correct?

A. Yes. The move from Florence, South Carolina, as a sales rep to Atlanta was a promotion, yes, sir.

Q. Okay.

Other than through various sales training that you might have had early at RJR and into these new jobs, did the company put you through any other types of training programs?

A. Well, I went through an extensive training program when I started with the company. That was something that was a requirement for all new hires in field sales with R.J. Reynolds. And that was an extensive program that outlined what my accountabilities would be, what the company's policy and operating procedures are, the expectations of me as an employee of the company in that capacity. There were other training programs, individual training programs that I have gone through, throughout my career with the company: Managing for Motivation, Professional Selling Skills, as -- as examples.

Q. So you assumed the role as assistant division manager in late '81, is that correct, or --

A. That sounds about right.

Q. And how long did you hold this job?

A. I believe I was -- or I was in that capacity until sometime in 1984.

Q. Did you move to a new job in 1984, then?

A. In -- at some point in 1984, I believe, about the middle -- middle of 1984, I was promoted to a division manager.

Q. So you went from assistant division manager to division manager, then, correct?

A. That's correct.

Q. Did division manager take up the geographic area under -- under that title as well? I mean, you were responsible for a certain territory?

A. Correct.

Q. And you had a sales force under you, then, at that point?

A. That is correct.

Q. And what territory would your responsibilities have covered?

A. I was based in New Orleans, Louisiana, and covered, I would estimate, about half of that state.

Q. Did your responsibilities broaden at that point, perhaps is a way to put it, from assistant division manager? Were you doing the same thing, other than you were the boss now?

A. Yeah. I mean, I became accountable for, versus reporting to a division manager, for that marketplace.

Q. And then who did you report to at that stage?

A. I reported to the regional sales manager.

Q. I think we're about five years into your career with RJR there, at this point, if my arithmetic is correct. Can you give me some sense or some picture of what you had begun to learn about the company at that point that you hadn't known before you started to work there?

MR. BEACH: Object to the form of the question. It's awfully ambiguous. If you can answer, Mr. Pennell, try to answer.

THE WITNESS: The only answer I could give to that is, is that when -- as previously mentioned, I did not know the company well, even though I grew up in Winston-Salem. I went there, not knowing that is where I would stay.

I had, at one time, applied to go back to business school, had been accepted, determined that it's not what I wanted to do, I wanted to stay with this company. I was very pleased with this company, in terms of what they offered me, my progress with them. And I think that it's indicative of -- of the fact that this is the only company I've worked with and I've stayed with them, despite other opportunities, is indicative of me feeling very strongly about this company.

BY MR. HOPPER:

Q. What makes you feel so strongly about it?

A. I believe this is a company that has very high standards, high expectations. It treats its

employees very well, rewards them for their efforts and hard work, and gives them opportunities to improve themselves from a personal standpoint.

Q. What kind of standards and expectations do you think are high that the company has, that you referenced?

A. Well, they have a very strong set of expectations from how their employees operate, how their employees carry themselves, the expectation that their employees work within the policies and procedures outlined. They have been very strongly involved in community activities and efforts, supported the community that, not only they are based in, but gave those of us, when I was in field sales, the opportunity to rely on their programs to support our own community; match programs, et cetera, in terms of charitable, you know, organizations.

Q. Okay. You referenced the fact that you had made application to business school. Which business school would that have been?

A. Babcock Business School at Wake Forest.

Q. And would that have been to seek an MBA?

A. That's correct.

Q. Was that your intention?

Other than the fact that you referenced your satisfaction with your employment with RJR at the time, are there any other factors that influenced your decision not to go to business school?

MR. BEACH: Object to the form of the question. You can answer.

THE WITNESS: No. It literally was driven by my being very satisfied and comfortable and happy with what I was accomplishing and -- at R.J. Reynolds Tobacco Company.

BY MR. HOPPER:

Q. Were you married at the time?

A. At which time?

Q. In 1984, when you made application to Babcock?

A. I'm sorry. It was not in 1984 that made application to Babcock. It would have probably been in 1981 or '82.

Q. I see. Okay.

A. And I was not married at that time, no.

Q. What year did you get married?

A. 1983.

Q. And you're still married?

A. That's correct. Yes.

Q. To the same person?

A. Yes.

Q. And what's her name?

A. Sarah.

Q. Is she from Winston-Salem?

A. No, sir.

Q. Where is she from?

A. She was born and raised in Michigan.

Q. And do you have kids?

A. I do. Two boys.

Q. And what are their names?

A. My oldest is Timothy.

Q. And he's how old?

A. He is ten. And my youngest is Clayton, and he turned eight today.

Q. We must end this deposition, then, right?

A. That would be nice.

Q. In 1984 you moved to New Orleans, you were married, and you basically took up a new job with RJR. How long were you in that job?

A. For around ten months.

Q. And you changed -- is it fair to say late '84, then?

A. It was middle of '84 that I moved to New Orleans, somewhere June or July period, and somewhere in the May/June area that I moved back to Winston-Salem with the company.

Q. Too many spiders and armadillos?

A. It was a different place to live. I'll agree to that.

Q. Were you promoted into a new job at that point?

A. I was -- actually, it would have been considered a lateral move.

Q. Did your job title change?

A. It did.

Q. And it became what at that point?

A. Assistant brand manager.

Q. Was this still within sales?

A. No. This was a move into the marketing department.

Q. What prompted that move?

A. I was asked by the company to consider coming in to the marketing department in an entry level capacity, more junior capacity, and was asked to consider doing that, and was asked to make that move for two years. And at the end of two years, if it was my desire to move back to sales, which had been the career path I was on, then that would be the case. Or if I decided to stay in marketing, then that opportunity, provided I was performing at expectations, would be available as well.

Q. Had you produced some pretty good numbers or were your sales achievements notable in those various sales positions you held from '79 to '84?

A. I don't -- I don't -- you know, that's tough to respond to. I can't exactly recall what the performance of the business was in New Orleans. And then, candidly, I'd been there such a limited amount of time, my ability to significantly impact that in any major way, you know, would have been difficult.

So, I can't recall exactly what the sales trends of our business was during that -- that time in New Orleans.

Q. Let me ask the question a little bit differently. Did you have personal sales quotas to meet?

A. We had objectives, yes, sales objectives, in terms -- on various measures.

Q. For your division?

A. For my division, correct.

Q. But you personally didn't have the assistant or the divisional manager set a goal for you that you had to reach and you needed to sell X amount of product or something to that respect?

A. I'm sorry, I'm not following your question.

Q. Some salespeople have sales quotas to meet.

A. Uh-huh.

Q. Shoe salespersons, they have to sell to 3,000 pairs of shoes or -- did you have any kind of a structure like that placed in your job?

A. No, I never had any minimum quotas I had to meet.

Q. Okay.

Through your performance reviews during that time, then, did the company indicate to you that you had achieved or reached certain objectives that prompted the various promotions? Did you do anything notable or were you -- would you consider yourself pretty much in the middle of the pack of other people who were performing in that regard?

MR. BEACH: Object to the form of the question.

BY MR. HOPPER:

Q. I think you understand what I'm asking, don't you?

A. Well I can't speak to where in the, quote, pack, as you put it, I felt. I'm just not able to do that.

What I do know is, is that my performance evaluations, as I recall them during that period of time, you know, were very positive. I was recognized as doing an above average job in performing my job duties. When there were specific management objectives, in terms of developing individuals or what have you, I had met those. And -- and it was deemed that -- the promotions aspects of it, it was recognition of a need to fill a position that existed, as well as my ability and proven capabilities, in somebody's belief at any given time, to do that.

Q. So there was nothing about your -- your record or your performance in sales that was exceptional or -- or, conversely, poor that led you to move into marketing for any reason?

MR. BEACH: Object to the form of the question. You can answer.

THE WITNESS: I don't know how to answer that. I was approached by the company relative to them wanting to bring some -- me in from sales into marketing. And that, if I would make a two-year commitment to that, then I could go back to field sales, if at the end of two years that was my desire, given that that's where I had -- had my career focused. And that if I didn't -- I wanted to stay in marketing and was meeting their expectations of the job, then that option would be available to me as well.

BY MR. HOPPER:

Q. At the time that you were still working in sales, Mr. Pennell, forgetting, perhaps, for the moment you're in a deposition in a legal proceeding, and someone asked you what you did, how would you respond to them?

A. It would be very hard for me right now to forget that I'm not in a deposition or in a legal position -- situation.

As I stated earlier, it is my belief

that I performed above average and certainly gave a hundred percent in every position --

Q. I'm sorry, I think I may have misled you. I apologize.

If you were in 1982 and you were having a beer with your buddies or something and you met a new guy and he asked you what you did, how would you describe what you do?

A. Oh, I'm sorry.

I would describe my accountabilities in field sales as, as responsible for the distribution, presence and availability of our products at retail -- or in the trade environment within my assigned area.

Q. Okay. And you'd say that would be tobacco products?

A. Tobacco products.

Q. What was the biggest distinction, having worked in sales for about five years, once you moved over into marketing, that you noticed?

MR. BEACH: Object to the form of the question. It's awfully ambiguous. You can answer, Cliff. Go ahead.

THE WITNESS: Well, I do recall that the biggest difference was, is the amount of time that I spent in meetings versus out on the -- the trade, which is where I had spent most of my time before.

BY MR. HOPPER:

Q. You said that became a -- that your job became assistant brand manager. Am I assuming correctly, then, that you reported to a brand manager?

A. I reported to a senior brand manager when I came into -- to marketing, yes.

(MR. DONAHUE ENTERS ROOM)

MR. DONAHUE: I'm Dan Donahue with Reynolds, also appearing.

MR. HOPPER: As counsel?

MR. DONAHUE: Client representative, counsel, whatever.

MR. HOPPER: I mean, are you an attorney?

MR. DONAHUE: I am, licensed to practice in the State of North Carolina. I'm with Reynolds.

MR. HOPPER: Okay, in-house counsel, then.

MR. DONAHUE: That's correct.

BY MR. HOPPER:

Q. What kind of duties and responsibilities did you hold in your new job?

A. I was involved and responsible for the execution of marketing programs for a given brand to ensure that they were coordinated and executed in -- in market.

Q. And what brands were those?

A. When I came in and was assistant brand manager, it was on the Camel brand.

Q. Only?

A. Only.

MR. HOPPER: Could you mark that, please, as Arch Plaintiffs' Exhibit 1.

(PLAINTIFFS' EXHIBIT NUMBER 1 WAS MARKED
FOR IDENTIFICATION)

MR. HOPPER: Counselor, I only have
the one copy of this. I have other copies of other
things. But I'd be happy to let you look at it.

BY MR. HOPPER:

Q. Mr. Pennell, I'm showing you what has been
marked as Plaintiffs' Exhibit Number 1 in this
matter. It's an organizational structure, as it's
referred to, referencing the brand marketing
department. I wonder if you could identify for me
what period of time, based on the people who worked
there, this organizational structure may have
applied to?

MR. BEACH: To the extent you can.

MR. HOPPER: If you know.

THE WITNESS: Just give me a second
to --

MR. HOPPER: Sure.

(WITNESS REVIEWS DOCUMENT)

MR. BEACH: I'd just like to note
for the record that this document entitled -- or is
entitled Brand Marketing Organization Chart. It
appears to be part of a larger document, and we
have but one page produced before us.

THE WITNESS: To the best of my
recollection, this would be sometime between the
period of April to May of 1988 to July of 1990.

BY MR. HOPPER:

Q. Now, your name is on that chart in the
position of what?

A. This would have me as the brand manager for
Camel.

Q. Would that have been the next move from
assistant brand manager, then?

A. No, sir. In 1987 I was -- became brand
manager of More/Now/Ritz brands, and held that
position until I became the brand manager on Camel
in April/May, somewhere in that period, of 1988.

Q. You became brand manager of Camel?

A. In the April/May period, somewhere in that
ballpark, of 1988.

Q. And that's -- it's fair to say that's what
this chart reflects?

A. Correct. That would be -- it would be no
sooner than that, because that's the soonest -- or
the earliest I became in that capacity.

Q. And it looks like, according to this chart,
you reported to an R. M. Sanders, vice president,
advertising and brand management; is that correct?

A. Yes.

Q. Do you still report to Mr. Sanders?

A. No, I do not.

Q. So, for about a year, you switched -- or,
excuse me, let me strike that.

You moved from assistant brand manager
in mid '84. You held that position until sometime
in 1987. So for about three years --

A. No, no. I'm sorry. It was 1985, mid 1985,
when I came into the marketing department as
assistant brand manager. I was division manager
from mid '84 through mid '85.

Q. So in mid '85 -- from mid '85 -- I'm

confused.

From mid '84 to mid '85 you were assistant brand manager?

A. No. From mid '84 through mid '85 I was division sales manager in New Orleans, Louisiana.

Q. All right. So mid '85 you became assistant brand manager?

A. That's correct.

Q. And you held that job from mid '85 until sometime in '87?

A. Sometime the end of 1986/early 1987. I don't recall the specific dates.

Q. You became the brand manager for More, Now, and Ritz?

A. Yes, sir.

Q. Which is also reflected on this chart, I believe, isn't it?

A. The brands are, but --

Q. Correct.

A. -- not me in that capacity.

Q. But the organizational structure is represented here?

A. It reflects the brand structure that way, yes, sir.

Q. Okay.

How long did you hold the job, then -- perhaps you've already stated it -- from the brand manager in More/Now/Ritz until the Camel brand manager position was assumed?

A. I believe, as I stated, that it was somewhere in the April/May -- until April or May, somewhere in that ballpark, of 1988.

Q. Moving forward, from April '88, as brand manager of Camel, how long were you in that position?

A. How long was I the brand manager on Camel?

Q. Yes.

A. Until through July of 1990.

Q. And which position did you assume at that point?

A. In August of 1990, I became director of our savings business unit.

Q. So this was a completely different shift for you, then, in 1990, correct?

A. That's correct. Yes, sir.

Q. Can you describe in some detail for me the responsibilities and duties that the brand -- various brand manager positions encompassed, starting from assistant brand manager through the Ritz brand manager through the Camel brand manager position?

A. Let me clarify. Are you asking me to give just a general description of what the job accountabilities are for an assistant brand manager versus a brand manager?

Q. You can start there.

A. Assistant brand manager was largely responsible for executional -- execution and implementation aspects of a given brand's programs.

Q. What did you do when you implemented and executed?

A. Well, they ensured that the advertising that had been agreed was going to run ran; that the

promotions that had been developed to take place took place and were implemented.

Q. So did you interface with the advertising department at that point?

A. Yes, they did.

Q. There was a separate in-house advertising unit within RJR?

A. No. We have, during my time, used outside advertising agencies that varied by brand.

Q. And who are some of those advertising agents, at the time, that you employed?

A. For which brand during which time?

Q. Let's start with -- well, you were assistant brand manager under Camel, correct --

A. Correct.

Q. -- to start with?

Who would that have been?

A. I believe our agency of record for Camel at that time was McCann-Erickson.

Q. Anybody else?

A. That's the only agency I remember.

Q. What about Now/More/Ritz?

A. I believe the agency of record for Now/More/Ritz was Lieber Katz Partners.

Q. And as you moved to Camel brand manager?

A. The agency of record, initially when I moved to Camel, was McCann-Erikson. And at some point between that period -- I started in '88 -- and July of 1990, we moved the agency of record to become Young & Rubican.

Q. Did your duties and responsibilities as assistant brand manager and brand manager encompass conceptualizing advertising ideas and campaigns with the outside agents?

MR. BEACH: Object to the form of the question; it's awful ambiguous. But if you can answer it, Cliff, go ahead.

THE WITNESS: The distinction and accountabilities and responsibilities varies right much, or it certainly did then, between an assistant brand manager and a brand manager. They were there to serve in different capacities in terms of the roles they played. So it's tough to answer your question broadly, when you -- when it's stated as those two positions together.

But as a general rule, yes, it was the brand's responsibility to work with the agency in concept development and program development of ideas and what was going on on that brand.

BY MR. HOPPER:

Q. Was there a distinction between your target markets in Camel than between -- as between Camel and Now/More/Ritz?

MR. BEACH: Object to the form of the question for lack of foundation.

THE WITNESS: Could you define "target market"?

BY MR. HOPPER:

Q. Did you attempt to market those brands to different customers?

A. Yes. The prime prospects of adult smokers was different between those brands.

Q. Who were they?

A. For which brand?

Q. For each brand.

A. For More and Ritz, they were more stylish smokers, smokers -- adult smokers who were highly concerned about an image from a stylish, more up-scale standpoint. That tended to skew female and tended to skew slightly older among the adult smoker universe.

Q. Anything else about those customers that you would describe?

A. That's what really comes to mind right now.

Q. And what about Camel?

A. Camel's prime prospects of adult smokers tended to be much more laid back, easy going. Product expectations, in terms of the taste and performance of their product, was major priority for those adult consumers. It tended to skew male, in terms of who was interacting with that brand. And -- that's really what comes to my mind for -- for Camel.

Q. What year would you have been referring to with respect to this description of the Camel customer?

A. I'm sorry, can you -- when you say "the Camel customer" --

Q. Laid back, easy going, that this was a priority for consumers, and that it skewed to males. Was there a particular period of time or a year that you adopted this marketing concept for that type of product?

MR. BEACH: Object to the form of the question. You can answer it, if you can.

THE WITNESS: Could you restate your question? Sorry.

BY MR. HOPPER:

Q. You've just described -- let's call it the customer profile, perhaps. You may need to correct me if I don't have the proper marketing nomenclature or lexicon. But you've described a certain image, based on a concept of what you and the marketing area of RJR described as a Camel customer, and I wondered what period of time that concept or image applied to the Camel customer. When did you conceive that and ...

MR. BEACH: What are you asking? It's compound. Object to the form.

THE WITNESS: Let me attempt to answer the question this way.

When I came in, in mid 1985, and was an assistant brand manager on the Camel brand, one of the points of opportunity and development for the brand was, is the recognition that its -- its smokers were primarily male; they were very serious, in terms of their overall attitudes in life, et cetera. And competitive adult smokers saw that as being a very old, outdated brand that had a very hash, non-favorable product delivery and taste. And the opportunity for Camel, at that point, and certainly when I moved back to Camel, was to try to change the old, outdated perceptions for the brand, in terms of who its smoker base was, and to also change, most importantly, the product perceptions of it being an -- a hot, harsh,

poorly-tasting product that primarily came, if not only came, by many consumers' standpoint, a non-filtered product, because that was its heritage.

BY MR. HOPPER:

Q. Now I'm jumping way back, because I want to understand the progression of your career.

You did not study any formal marketing or business courses in your undergraduate curriculum at Wake Forest, correct?

A. That's correct.

Q. Did you take any kind of marketing courses or study any kind of sales or marketing along the way in your career, once you graduated and started with RJR?

MR. BEACH: Object to the form.

Asked and answered.

MR. HOPPER: It's not -- it's not any objections. He knows exactly what I'm saying. I'm trying to find out what he studied. It's simple.

MR. BEACH: He's already answered the question.

MR. HOPPER: No, he hasn't.

MR. BEACH: Go ahead and answer the question.

THE WITNESS: I believe, as I stated before, the only formal education I had was my undergraduate, and have taken no postgraduate courses at all.

MR. HOPPER: See, that's why he hasn't answered the question, because --

BY MR. HOPPER:

Q. And I'm sorry. I wasn't referring to formal education or postgraduate, formal programs in a business school or anything like that.

Did you study any kind of marketing or take any marketing courses or anything, either that RJR put you through or that you read any books or anything like that?

A. Oh, yes. I've read -- I've read books from time to time relative to marketing. But ...

Q. Would they have been textbooks or gorilla marketing tactics, or what kind of things did you read and study?

A. No. They would have --

MR. BEACH: I object to the form of that question.

MR. HOPPER: What's wrong with that form? Educate me. What's wrong with the form?

MR. BEACH: I find --

MR. HOPPER: I asked him if he had read a textbook. That's simple. And I asked him if he had read tactics in gorilla marketing. That's simple. That's a book. What's wrong with the form?

MR. BEACH: I don't know what "gorilla marketing" is --

MR. HOPPER: It's a book.

MR. BEACH: Do you know what gorilla marketing is, Cliff?

MR. HOPPER: Hold on.

MR. BEACH: To the extent that you

know, you can answer --

MR. HOPPER: Hold on. Tell me what's wrong with the form of that question?

MR. BEACH: I'm not familiar with the text you're referring to. I took it as an argumentative question. That's what was wrong with the question.

To the extent a text exists and you're asking Mr. Pennell about a specific text, that's fine. And if that was my misunderstanding, that a specific book exists by that title, that's fine. But I construed your question as argumentative in tone and didn't appreciate it on that -- from that standpoint.

MR. HOPPER: Well I, too, would offer any -- any apologies for misleading counsel, if that's what he thinks. But asking --

MR. BEACH: Why don't we just move forward.

MR. HOPPER: -- asking the deponent what he had read, I don't see any problems with the form of that question. It's certainly not argumentative to ask somebody what they've read.

MR. BEACH: Okay. Well I explained --

MR. HOPPER: All right. Let's move on.

MR. BEACH: -- where I was coming from. Why don't we just move forward, please.

Can you read the question back, please?

(WHEREUPON, THE QUESTION WAS READ BACK BY THE COURT REPORTER AS FOLLOWS:

QUESTION: And I'm sorry. I wasn't referring to formal education or postgraduate, formal programs in a business school or anything like that.

Did you study any kind of marketing or take any marketing courses or anything, either that RJR put you through or that you read any books or anything like that?)

THE WITNESS: I -- I have read books since I have come into marketing. I have not taken any specific marketing courses, either within -- with the company or on my own, since I have been in marketing. But I have read some books.

BY MR. HOPPER:

Q. Can you identify any of the titles of those books for me that you recall?

A. I really can't recall any of the specific books.

Q. Would it be fair to say that your -- your knowledge and understanding of brand marketing, then, came through your job?

A. Yeah. I think that I would -- that hands-on experience in -- has largely been the determinant of me conducting my business.

Q. Is brand marketing unique to the sales of tobacco products?

A. No.

Q. I didn't think so.

Other companies take up brand marketing, do they not?

A. That's correct.

Q. How would you describe brand marketing?

A. I would describe brand marketing as being the function that is accountable for and responsible for determining the overall vision, strategies and executional elements of a given consumer product.

Q. Can you give me examples of what other brands and brand marketing might be that you know of, outside of the tobacco industry.

A. I mean, are you asking me to name consumer products that have a brand management function?

Q. If you know any. Just to educate me.

A. Well, I know of people who have worked with -- folks -- you know, companies like Proctor & Gamble that has brand management groups.

Q. What would be an example of brand marketing for them? Do you know or have any idea?

A. It might be Tide or whatever the product is.

But, you know, from a personal standpoint, I believe that most major consumer products companies have a brand management group.

MR. BEACH: We've been going for close to an hour.

MR. HOPPER: Do you want to take a break?

MR. BEACH: If we could. Maybe five, ten minutes, at the most.

MR. HOPPER: Sure. Five minutes?

(RECESS TAKEN FROM 10:09 A.M. TO 10:17 A.M.)

(MR. DONAHUE NO LONGER PRESENT)

BY MR. HOPPER:

Q. We're back on the record now.

You used the term "consumer product companies" a moment ago, Mr. Pennell. Do you consider RJR to be a consumer product company?

A. Yes, I do.

Q. And I'd asked you also to describe for me or give me examples of other companies who, as you said, were consumer product companies and examples of brand management, and you referenced Tide. Could you give me other examples of companies involved with brand marketing?

A. Sara Lee, Bali, Ford, Anheuser-Busch.

Q. Meaning Budweiser as their brand?

A. Yeah, Budweiser, Busch.

Stouffers, Minute-Maid Orange Juice.

Q. And you could probably go on and on?

A. Yeah. Tylenol.

Q. In the course of your work as assistant brand manager and brand manager, did you look at or compare your consumer products, your consumer tobacco products, with other products in any way?

A. How -- what do you mean, "compare"?

Q. From a brand marketing standpoint, did you survey their marketing efforts? Were you familiar with what other consumer product companies did in brand marketing?

MR. BEACH: Object to the form of the question. You can answer.

THE WITNESS: I don't know how to define "familiar". Am I aware of those products? Am I aware that they are advertised and promoted? Yes.

Am I familiar with the structure of their organization to do that? No.

BY MR. HOPPER:

Q. What I'm trying to understand or learn about is -- is your knowledge and understanding of brand marketing. I asked you questions about your study. I'm trying to learn about how you learned brand marketing, because you didn't go study it in graduate school. So my question is really aimed at how you learned on the job.

So did you study or look at or try to understand how other companies brand marketed, to do your job better?

A. I really would have to say I haven't spent any significant, or otherwise, amount of time learning from others.

Yes. I mean, if there's an article that might appear in an issue of Ad H or what have you, then, yes, I'd read that and -- and understand what is -- is being said there.

But I would have to say that the majority of it has come from on-hands experience, learning by doing, learning -- always reporting to somebody who has more experience at it than I do, and as well as learning from peers.

Q. When I first asked you about your move into brand marketing as assistant brand manager in Camel, you described that job as being comprised of interfacing with advertising, and how advertising took place, and to be sure that promotions ran. Can you elaborate on that a little bit further?

A. I think the context in which I discussed that was, is that an assistant brand manager's, at that time, primary accountability was to oversee execution of programs, ideas, strategies that had been agreed to. And examples of that would be to insure that the advertising that had been developed and was to run and market did, coordinating the production and oversight of placement of that with the groups who were accountable specifically for that, and the same approach --

Q. Excuse me, you moved a little too fast. The last part there? To be sure that the advertising was developed and run in markets, did. And then you said something else.

A. And that the -- that the production of those ads was effectively completed, so that -- and they could be placed in market.

The example I used for promotion, as another area, was to make sure that the programs that had been developed were, in fact, implemented. Quantities ordered of the items that had to be ordered for promotion or -- just any executional element of that.

Q. As you moved from assistant brand manager to brand manager, did your job become more conceptually-oriented versus this more

mechanical-oriented nature of your job? As you described your job -- strike it, so I don't elicit objection from counsel. Let me change it from a compound question to some simple questions.

Is it fair to say that your job as assistant brand manager was a more mechanical, functional type job?

A. Yes. More executional in nature. More tactical in nature, yes.

Q. I take it, by the terms you used, that that's true.

As you became brand manager, did that job change?

A. Well the brand manager is responsible for oversight for a given brand or brands that they have. That means they are responsible for the strategies and also ensuring that programs -- the development of programs and activity, as well as the execution of that.

Q. So there's a pretty significant difference, actually, when you move from assistant brand manager to brand manager?

A. There is a -- there is an evolution and a difference.

Q. Is it fair to say that, as you move from the execution and more functional, mechanical aspects of the assistant brand manager job to the brand manager job, that it becomes more conceptual in nature?

A. Define "conceptual" in -- as you mean it.

Q. Well I'll ask you to, because you used the word "oversight". Tell me what that is comprised of.

A. Oversight means accountable and responsible for the total activities on that brand.

Q. But you've used the word program, ideas, strategies; and those tend to lead one to believe that you're looking at concepts and ideas. Is that true?

A. Oh, clearly looking at various ways and concepts and ideas of doing it -- of doing -- handling the accountabilities for that job is clearly obviously a part of it, yes.

Q. Sure. Can you give me an example or an idea of the process you might go through in generating programs or ideas or strategies? And let's just be very narrow and specific and tailor that to Camel.

MR. BEACH: During which time period?

MR. HOPPER: I don't care when.

THE WITNESS: Yes. It starts with having a vision, if you will, or expectations of that brand in terms of its overall objective. You then develop specific strategies against that objective.

Against any one or more of those strategies there is concept development, idea generation, pursuing a lot of different options on how you might do that. You ultimately reach the point where you have determined, through whatever means, how and which ones you want to do, and then they're executed.

BY MR. HOPPER:

Q. I mean, to me that's a pretty conceptual-oriented process, is it not?

A. There's a conceptual element and part of it.

Q. I realize. And there's an implementation/execution aspect to it as well. You've got to -- the rubber has to meet the road at some point.

But the very first thing you described for me a few moments ago, that was the biggest difference in going from sales to marketing, was you were in a lot of meetings, correct?

A. That's correct.

Q. So I assume, in these meetings, you're spending time creating these visions and expectations and objectives and strategies and concepts and ideas and programs, correct?

MR. BEACH: Object to the form of the question.

THE WITNESS: Well, when I initially came in as assistant brand manager, most of my time was spent getting up to speed of understanding what marketing was all about, observing what was going on. Once I assumed responsibility for specific areas, as I mentioned before, it was much more of an executional type nature: This is what we're going to run during this period; how do we make that happen?

BY MR. HOPPER:

Q. Did you like it?

A. It was different and an adjustment, but, yeah, I liked it.

Q. Was it enticing? Was it interesting?

A. "Enticing" would not be a word I would use. Interesting, yes. Enjoyable, yes.

Q. But it was distinctly different from pounding the pavement in a sales job.

A. They were very different jobs, yes.

Q. Can you give me an example specifically about how you would develop a vision or an expectation and an objective for Camel, at any given time that you've been involved with that brand? What would be an example of that?

Either in a program or an ad. I assume those are the two media through which these visions, expectations and objectives are promulgated.

A. I'm sorry, I'm not sure I'm following. Are you asking for -- to pick a specific example of a program and how did that happen -- I mean, how did it get to market? Or are you ...

Q. I am doing that. I'm trying to understand your job. I'm a lawyer, I'm not a marketer, and I want you to explain your job. But I don't want you to explain your job to me just in terms of the big constructs. I'm asking you, now that we've talked about the constructs for it, how does it actually roll out into something tangible?

A. Okay. If we use Camel as the example and you start with the recognition that we talked about earlier, that you've got adult competitive smokers that see your brand as being old, outdated from a "who smokes it" standpoint, they see it as being a very hot, harsh, non-pleasing product from a taste

standpoint, then what you have defined is, is your opportunity. And that is, is you want to grow your market share for that brand. Then you would be looking to try to get adult smokers to change their perception on how they view your brand.

Parallel to that would be to ensure that the current franchise smokers that you have continue to see your brand as a very viable option to them. So that kind of --

Q. What does that mean?

A. Well, what you --

Q. Current franchise --

A. The people who currently claim the brand and smoke it as their brand.

Once that has been done, staying with the Camel example, then what you begin to do is, is to say, you know, what are the options and opportunities for me to improve those perceptions, both emotional and rational, the product and the perceptions of who smokes it? What are -- what are the different ways that I can accomplish that?

And, you know, it is at that point that you -- you develop hypotheses, theories, et cetera, relative to what those ways may be. Your advertising agency, you know, goes off and comes back saying, you know, here are some thoughts that we have. You pursue those, relative to whether you think they are consistent with your expectations and standards and requirements; you throw those out that you feel aren't. You would perhaps go and talk to consumers, adult smokers, and get their impressions on, if I did this, how would it make you feel about the brand, et cetera.

That would narrow down, then, in terms of a specific number of opportunities or ideas to the one that says this is one I am going to do.

Q. And an example of that might be ...

A. Whatever advertising you might run.

Q. Can you give me an example of it?

A. Sure. Let's use Joe Camel.

Q. All right.

A. All right. Joe Camel was developed to provide -- in my opinion, and certainly relative to the time that I had on Camel, was developed to make adult consumers rethink that brand on the -- in the two areas that I previously mentioned. One was from a product standpoint, and one was from an emotional standpoint.

And, so, during that process, there were a lot of iterations or opportunities or ideas looked at, relative to, not only what it might be, but what the individual executions may or not be to run in market. And those that were felt to be consistent with the objectives of the brand and within our operating procedures would ultimately be brought to market; and those that didn't, would not be pursued.

Q. I think I'm starting to get it. I want to ask you to roll back into this just a little bit further for me.

Do the concepts emerge from the marketing department, group, division, whatever's proper in your structure, or do they emanate from

the population out there itself? Do you take a concept and attempt to impose it -- and when I use that word, I don't mean "coerce," but "project" it, perhaps, into that market population? Or are you -- are you looking at the market, and deriving from the market, and creating a concept?

A. I'm sorry, I'm just not following.

Q. Well you used terms a few minutes ago "stylish, up-scale standpoint, skewed to females, older adults; laid back, easy going, priority for consumers, skewed to male."

Is that something that you all thought up in the marketing department at RJR, or is that something that you see out there within the population and then you're trying to market to that?

Do you think people are laid back and you look at a population that's laid back and then you say, Let's create a product and a marketing concept, advertise to that? Or are you saying we're going to create a marketing concept of something that projects an image of being laid back, and then impose it, so to speak, or project it onto that market?

MR. BEACH: Object to the form of the question. Answer it, if you can.

THE WITNESS: I think the best answer I can give to that is, is that there is who is using your product today and why. There are those who are not using your product today and you ask yourself, and you go and ask them -- in our world as adult consumers, smokers -- why they are not. You take what is there of why adult consumers -- or smokers are choosing your product today and why more adult smokers, in Camels instance, are not. And then you try to understand why adult smokers are choosing the products that they are, in talking to them. All right?

And then, what you are ultimately trying to do is, is to position your brand as being able to meet the wants of those consumers who currently believe that it is not.

BY MR. HOPPER:

Q. Okay.

You said a moment ago you develop a hypothesis, and I think that maybe that's how I should have started this -- the prior question.

Would the hypothesis be, for example, a pretty woman dressed a certain way, alluring, and then you're trying to reach that portion of the adult female population out there?

A. No. I would not see that. That certainly was not what I meant to characterize a hypothesis. A hypothesis, staying with the Camel example, would be -- our hypothesis is that people believe that jailbirds --

Q. That what?

A. Jailbirds, down-scale people, and grandfathers are all that smokes Camel, and that all that Camel has is a non-filter product, which has a very hot, harsh taste, and is not consistent with what I consider to be, as an adult smoker, a viable option for me. I don't want to be

associated with people that way, I don't want to be -- more importantly, I don't want to be smoking a product that is not giving me the enjoyment I desire and want for my product. All right?

So there is a hypothesis that you would say: I believe that is why this brand is not performing any differently than it is. And then, within that hypothesis, what you do is, is you go and seek to confirm whether or not that hypothesis is legitimate and has any bearing on it.

Q. And if it doesn't?

A. And if it doesn't, then you move to the next hypothesis or opportunity to pursue.

Q. Such as Joe Camel, perhaps?

A. I would say that Joe Camel is an outcome of that hypothesis --

Q. Exactly.

A. -- in my opinion.

Q. And what -- what does it represent?

A. In my opinion, Joe Camel represents laid back, enjoys life, humor.

Q. Well, it's a cartoon character, isn't it?

A. It's a --

Q. That's how I look at it.

A. It's a caricature.

Q. But it's an animated-looking cartoon character, correct?

A. It's an animated character of a camel, yes.

Q. Is Joe Camel trying to project laid back, enjoys life and humor onto that market, or is it trying to look at -- do you look at the market from your hypothesis and say, Gee, there are laid back people who enjoy life out there who are humorous, and we want to reach that?

A. Well, I think it's important to -- for me to say that I am not the one that developed Joe Camel. I was not on the brand when that happened.

Q. Sure. Sure.

A. But I did, during my time on Camel, evolve the camel character, et cetera.

What -- how I would state it is that what the camel character has done is two things for the brand. One has said we don't take ourselves, as a -- as a brand, as seriously as you believe that the people that smoke this brand are, in terms of being old, outdated, et cetera, and that our product is smoother, since that is the opposite of all the perceptions they had, than what you believe it to be.

Q. I understand that. You've attempted to change the image of Camel brand cigarettes, I mean.

A. I would prefer to state it as it was intended to change consumers' perceptions of the brand.

Q. Okay.

How is it that Camel had this harsher, more serious image in the marketplace in the first place? Harsher tasting, I meant to say.

A. Well you're asking me to speculate, because I don't know. But, you know, my --

Q. Well you -- to do what you do, you kind of have to understand where it came from, don't you? I mean, you don't just start from 1985 or whatever it is.

A. No, there's a difference between knowing what is going on today and why that specifically did happen.

Q. Correct.

A. You have to hypothesize or speculate relative to that. And in my opinion, as other brands were more effectively establishing their brands in the marketplace, the Camel brand did not keep pace with that --

Q. Such as?

A. -- and over time --

Q. Who else established brands? You're talking about Proctor & Gamble now?

A. Other tobacco products.

That Camel brand did not keep pace with that. And, therefore, over time, it began to see its business base erode and was not seeing switching from other adult smokers coming to the brand, as had been the case historically.

Q. I may want to come back to this later, but I want to go back to July '90, where you became the director of the savings business unit. How in the world did you get out of marketing and get over to finance, so to speak?

A. No, no. It was -- that was still within the marketing function.

Q. Tell me what the savings business unit is.

A. The savings business unit covered all of our value brands or discount brands within the company.

Q. Say that to me, again, please.

A. All of our "savings" or "value" or "discount" brands.

Q. I see.

A. There had become a significant increase in the growth of discounted brands in the marketplace.

Q. What are examples of those?

A. That would be brands like Basic, Cambridge, Dural, GPC, no-name brands or the black and white brands, private labels, Montclair, just to name a few.

Q. Without naming them, though, there are others?

A. That's correct, yes.

Q. Okay. Is it true there are about 398 brands of cigarettes out in the marketplace right now, all across the industry?

MR. BEACH: If you know.

THE WITNESS: There are a lot. I don't know if that's the exact number.

BY MR. HOPPER:

Q. Are there -- do you have a general idea? Are there less than 500 or more than 200?

A. It would be my estimate that there are more than 200 and probably less than 500 brands. That's not counting the various styles of brands.

Q. Sure.

So the job you took in 1990, as the director of the savings business unit, was similar to being a brand manager, but over this so-called savings product area, correct?

A. That was a promotion to me, to head up that -- that business unit. And there would have been brand managers and assistants for --

Q. Working under you?

A. -- for the savings brands, reporting to me.

Q. I see.

So if we go back to this chart for just a second, that I introduced as -- for the record as Plaintiffs' Exhibit 1 a moment ago, is there any representation on this chart of the savings brand unit?

A. Not as a savings brand unit. There is a representation of savings brands being handled by a given brand manager.

Q. Can you point that out to me?

A. Yes. That will be right here.

Q. Okay. So from the standpoint of this chart, whether the timing is accurate or not, because I'm trying to understand this organizationally, would you have moved from the brand manager, where your name is shown here, under Camel, Cliff Pennell -- Pennell, excuse me, over to this slot right here, and it would still be accurately depicted on this chart in --

A. No, that would not be accurate.

Q. Would it have been more up into where Mr. Sanders' job would have been, then?

A. It would have been more -- in that equivalent area. What we did was we reorganized, at that point, to create this savings business unit, which didn't exist before. So that all of that business would be together.

Q. So if you redrew this chart, the functional line under the component titled "Savings" wouldn't be in that slot any longer, correct? It was moved out?

A. I'm not following your question. I'm sorry.

Q. The functional line under -- in this chart that we're referring to, Plaintiffs' Exhibit 1, where it's denoted as "Savings," would no longer exist on this chart in that same location, pursuant to the changes you're saying that were made?

A. Well, the savings brands would no longer report to this person.

Q. That's what I'm saying.

A. Correct.

Q. Okay. It was moved -- moved out, so to speak?

A. That is correct.

Q. And you went over and headed this unit up?

A. That's correct.

Q. Okay.

Were your job responsibilities and accountabilities, as you refer to them, as the director of savings business -- the savings business unit, the same or similar as when you were Camel brand manager? You had assistant brand managers working for you, you've said, and brand managers working for you --

A. No, I would -- I would define them as being somewhat different. Number one was it was a newly created business unit, so there was the -- the need to make that transition, if you will.

Number two was we were -- we made that change because there was a rapid growth in the marketplace of industry savings brands entries,

et cetera. And the initial --

Q. What prompted that growth?

A. That was largely prompted by some competitors coming in and believing that price was what they wanted their positioning basis to be on, and so they came in at -- at a much lower price than had previously been the case in the marketplace.

Q. So savings brands are really discounted price cigarettes?

A. That's correct. They sell for less than Marlboros or Winstons or Camels.

And to finish the primary, then:
Difference was this was much more pricing-driven, in terms of the activity going on, et cetera.

Q. To put it back into the description that I asked you about earlier, perhaps this job was a little less conceptual-oriented and more price-driven oriented?

A. That was certainly the case originally, yes.

Q. How long did you remain in this job?

A. I still have that business unit today.

Q. All right.

A. But in 19 -- I'm just trying to -- in 1992 I was promoted to vice president. We moved full accountability --

Q. Vice president of what, Mr. Pennell?

A. The savings business unit.

At that time, we moved all of our private label business over to the savings business unit that had previously reported to sales. And I'm just trying to think at what point I picked up anything different. But I think that is the -- those were the key changes in '92.

Q. Has your job and/or title changed since '92?

A. Yes.

Q. If it's more than once, take me through each one, then.

A. My job title has changed only once since then. And that was in -- I'm trying to think when in 1995.

Q. Well, that's all right, as long as you can tell me the year.

A. 1995, to senior vice president of brands and marketing operations.

Q. Looking back again at Plaintiffs' Exhibit Number 1, this organizational chart, and not reflective of any specific time period, but for purposes of the organization, would that, then, mean effectively that you moved up into this position, which is -- it holds the name on the chart of Mr. John T. Winebrenner, but it says senior vice president marketing. Would that be the job that you -- that you took in 1995?

A. No, that would not be representative of -- of that.

Q. So it would be a position under that senior vice president of marketing?

A. No, that wouldn't be representative either.

Q. Okay.

A. As laid out in this -- this chart, that individual, as senior vice president of marketing, had all of brand marketing reporting directly to him.

Q. Okay. Well, you said -- then I'm sorry to interrupt, because I know you're going to explain it, but I want to be sure I'm clear. Senior vice president of brands and marketing operations.

A. That is correct.

Q. Okay. So explain to me how it's different then.

A. Well, this individual, as I mentioned, was -- had all of brand marketing and everything on this chart underneath that, as I recall it, reporting directly to him. There would have been a separate promotional operations group that would have been separate and reported both of them to the executive vice president of marketing at that time. That was the way that structure was.

Q. Okay, then, in 1995 who did you report to?

A. Initially in 1995, if I've got my dates right, I reported to -- was reporting, when I was promoted to senior vice president, to Mr. Ove Sorenson.

Q. Is it Ove?

A. Ove, O-V-E, Sorenson.

Q. S-E-N or O-N?

A. S-O-R-E-N-S-O-N, I believe.

Q. And he would have been executive vice president?

A. He was executive vice president of marketing.

Q. Since you said your title changed once since '92, is that still your present title, if I looked on your business card?

A. I'm senior vice president, brands/marketing operations.

Q. That's a pretty big job, I assume.

A. Um -- yeah.

Q. Are you an officer of the company with that title?

A. Yes, sir.

Q. From a corporate standpoint?

A. From R.J. Reynolds Tobacco Company standpoint.

Q. Which is held by a parent company?

A. That's correct.

Q. And that parent company name is?

A. RJR Nabisco.

Q. Right.

Tell me what all your -- so, really, the job you took in 1995 is -- is the job you have presently, correct?

A. I have picked up various areas of accountability and responsibility during that period of -- of time.

Q. And that's what I want you to tell me about, what all you do now.

A. Currently, today?

Q. Yeah.

A. Today I have the savings business unit that reports to me. I have our sales and marketing operations department that reports to me. And I have the -- our sports marketing enterprises department that reports to me.

Q. Is that it?

A. As of today.

Q. That's plenty, right?

A. Yes. That's a lot.

Q. And all the brands -- brand marketing, ultimately all roads lead to you too?

A. For all of Reynolds' brands? No. That's just the savings brands as of today.

Q. I see. So Camel and Winston and Salem and Vantage and Moore/Now/Ritz don't report to you?

A. Not today. Not as of today, no.

Q. Have they, in the past?

A. Some have. During that -- part of that period from -- we're talking '95 to today, the Vantage/More/Now brands reported to me. I had oversight accountability and responsibility for Moonlight Tobacco Company at one point.

That would have -- that would have been all that I had, that I don't have -- at any point in time since then, that I don't have right now.

Q. But from '95 until now, you have had no line responsibility for Camel, Winston, Salem, Vantage, More/Now -- does Ritz even still exist?

A. Ritz is not available in this market today.

Q. I didn't think so.

A. I have had line responsibility since then for Vantage, More and Now.

Q. Since then, yes, I understand that. But, presently, you don't have any responsibility for any of those brands?

A. That's correct, as of right here, right now.

Q. Is that reflective of any demotion or any -- taking any of your responsibilities away? Or is it simply just a functional reporting kind of change organizationally in one way or another?

A. No. We made that organizational shift. It was somewhat sensitive and confidential that we made that organizational shift because of individuals who have left the company or are still with the company, et cetera, in terms of trying to better balance the workload. And that restructure essentially all began to take place at the point that Mr. Sorenson left the company.

Q. Are there other responsibilities or accountabilities that you have in your current position that you would tell me about?

A. Savings business unit, the sales and marketing operations, and sports marketing enterprise are the three areas that report to me at this point.

Q. What's different about the sales and marketing department operation responsibility that you have that's different from the brand functions in marketing? You're looking at it more overall?

A. The sales and marketing operation is truly just that. The way we are structured as a company today is, is that there is a group of individuals that specialize in and handle all operational administrative functions for the -- for marketing.

Q. And sales, right?

A. And for sales, from a warehousing/delivery/point of distribution standpoint for support materials.

Q. You just simply don't get it down into the specific brands with that responsibility anymore, correct? That's handed over to somebody else?

A. There's a point of handover, yes. And they now handle that stuff instead of having the number of assistants that used to be on brands.

Q. As a regular part of your -- your management responsibility, would you go to a Camel brand marketing meeting?

A. No.

Q. I didn't think so. Nor Winston, nor Salem, nor --

A. That's correct.

Q. But you might interface with the person who has all those brands reporting to them?

I mean, you're higher up in the company now, because you're a senior VP --

A. Correct.

Q. -- so you're not going to sit down, you know, with an assistant brand manager, probably, anymore. But at some point there's an interface between the brands and the brand marketing and your overall position as senior vice president of marketing -- of sales and marketing department, correct?

A. Well the interaction -- to -- to best your question, the interaction with specific brands, as you were asking, is -- it depends on which brand that is. If it is savings brands, then my interaction is a much greater level than it is on a Winston or a Camel or a Salem.

Q. Right.

A. My interaction, from the operational standpoint, is oversight that that operational group, who handles all of the company's marketing stuff, be it multibrand or individual brand, reports in through me and has a staff that is accountable for that area.

Q. Okay. And you report to Mr. Sorenson, who's executive vice president, correct?

A. No. Mr. Sorenson, as I mentioned earlier, is no longer with the company.

Q. Oh, I missed that.

Okay, you do report to an executive vice president, presently, though?

A. I report to Andy Schindler who is president and CEO of the company.

Q. Does he, in turn, report to a -- oh, no. You said he's the CEO, right?

Does he, in turn, report to a Chairman of the Board? Is there a separate Chairman of RJR Tobacco?

A. No.

Q. Okay. Who does Mr. Schindler report to?

A. He reports to Steven Goldstone.

Q. Who is the Chairman and CEO of RJR --

A. RJR Nabisco.

Q. -- Nabisco?

A. That's correct.

Q. Right.

MR. HOPPER: Let's take a break for five minutes.

(RECESS TAKEN FROM 11:05 A.M. TO 11:10 A.M.)

MR. HOPPER: Back on the record.

MR. BEACH: Excuse me. Before we continue, Mr. Hopper, I'd like to just mention that -- that, at present, I'd like to invoke

Paragraph 11 of the protective order --

MR. HOPPER: Excuse me. Which protective order?

MR. BEACH: The protective order in the case for which you're counsel of record: Arch.

MR. HOPPER: I've signed a lot of protective orders, so I need to know which one.

MR. BEACH: Because, at this point in the deposition, it is our judgment that confidential, proprietary business information has been disclosed. So, I'm simply alerting you to the fact that I intend to invoke, for present purposes, this paragraph. And we'll operate, you know, with those provisions applying to this deposition in its entirety, pursuant to these provisions of the protective order entered in this case.

MR. HOPPER: I'd like to see what it says. But if I've signed a protective order, I think I'm already bound by it, from a confidentiality standpoint.

MR. BEACH: As I read it, I had some level of obligation to, during or within three days following the deposition, invoke its provisions. And I'm doing so now, because of some responses of Mr. Pennell to your questions preceding this prior break.

MR. HOPPER: Sure. I understand.

MR. GOTTLIEB: Giving page and line designations within the time frame set forth.

MR. BEACH: That's what I understand our obligation to be, yes. Although this provision obviously speaks for itself.

MR. HOPPER: Sure. Okay.

MR. BEACH: Thank you. Continue.

BY MR. HOPPER:

Q. Mr. Pennell, at any time during your, I believe, about 17 or 18 years of employment with RJR, have you entered into or signed any employment agreements?

A. Yes.

Q. Can you tell me what those would be?

A. I believe, when I started with this company in sales -- I'm not a hundred percent positive of this, but I believe that I signed an agreement relative to ensuring that I understood what the policies and procedures and expectations of this company are.

I believe, when I went through the -- if my memory serves me correctly, the formalized sales training program that took me through, not only what was expected of me in performing my job, but the company's expectations of how they conducted business and expected me to, that there was also a point at which there was that commitment made as well as -- for me moving through that course.

Q. Moving through that what?

A. Having finished that training program.

Q. Oh, sure.

A. I have signed, and do, on an annual basis, the business code statement for this company and provisions for this company, which is something that I am asked to -- to read and sign each year. And then I have a signed confidentiality agreement

with this company as well.

Q. What is that about?

A. That is about me insuring that I keep in confidence the information, et cetera, that I have, if I leave this company and go to work for another one.

Q. Sure. So you can't run off and go to work for Philip Morris and reveal RJR trade secrets?

A. That's correct. That's correct.

Q. When you became a vice president, did you enter into any type of -- of agreements as an officer of the company at that point?

MR. BEACH: Are you talking about written agreements?

MR. HOPPER: Yes, written agreements.

THE WITNESS: I can't fully remember, but I do believe that I, at that point, was asked to re-sign the business code of -- of the company.

BY MR. HOPPER:

Q. Were you awarded any forms of stock compensation, or anything like that, that separated you from a manager/director type level in the company to a vice president level?

MR. BEACH: Excuse me, before you answer that. I'm not going to permit Mr. Pennell to be answering questions about compensation or compensation structure.

MR. HOPPER: I'm not asking him to reveal his compensation. I don't want to go into that, just so you'll know. I respect that. I don't have any interest in that.

I'm trying to find out if he signed any agreements relative to anything like that. You don't have to go into that, if that's not your preference.

MR. BEACH: I appreciate that.

MR. HOPPER: Sure.

MR. BEACH: If you can, answer that.

THE WITNESS: I don't recall signing anything specifically, other than the business code aspect of it at that specific point, but there obviously -- or there was, the point at which I signed the competitive confidentiality agreement.

BY MR. HOPPER:

Q. Does anything go along with your having had an officership conferred upon you that distinguishes you, then, from being a lower level employee in the company?

A. I'm not sure I'm following that. Other than compensation?

Q. Yes. And being given the title.

A. Yeah. I would -- I would personally believe that everything that came as a result of my moving -- becoming an officer, senior vice president of the company, when that happened, in my mind, was largely a basis of -- and part of a compensation -- I would consider it all inclusive of and part of compensation --

Q. Okay.

A. -- in one way, shape or form.
Q. Have you ever had your deposition taken before today?
A. One time.
Q. And which case was that?
A. It was for a case -- I'm going to have to go -- I can't even remember the year. It was in the early '90s, but it was relative to an employee of an advertising agency who had went to work for a competitor.
Q. Someone from RJR's advertising who went to work for --
A. No. Somebody from -- one of RJR's advertising agencies --
Q. All right.
A. -- who left there and went to work for a competitive manufacturer.
Q. Was that a lawsuit brought by RJR against that employee?
A. Yes, it was.
Q. Who did you meet with to prepare for your deposition today?
A. I met with my counsel Geoff Beach.
Q. Is he the only attorney you've met with to prepare for this deposition today?
A. Yes.
Q. Did you meet with or talk to any of your in-house counsel at all?
A. Relative to this case?
Q. Relative to this case and relative to this deposition.
A. No.
Q. You didn't spend any time with Mr. Donahue?
A. No, I have not.
Q. Do you know Mr. Donahue?
A. I do, yes.
Q. Quite well?
A. I wouldn't say quite well. I know him.
Q. Do you work in the same offices or --
A. We're in the same building.
Q. Did you look at any documents in preparation for the deposition today?

MR. BEACH: I instruct you not to answer that question.

MR. HOPPER: On what basis, Counsel?

MR. BEACH: It's privileged. Selection of documents clearly -- I'm sure you'd take the same position if he was your deponent. Flex mental processes is subject to attorney work product privilege.

MR. HOPPER: I haven't asked him to identify those, I'm asking if he did look at any documents. I think he's entitled to tell me if he looked at any documents. That doesn't fall within the privilege, as I understand it. I haven't asked him to identify what documents he looked at.

MR. BEACH: And I trust you wouldn't do so.

You can tell him if you looked at documents.

THE WITNESS: Yes, there were several documents that I looked at.

BY MR. HOPPER:

Q. How long did you meet with Mr. Beach?

A. We met for several hours, one day last week, and several hours yesterday.

Q. Several hours, meaning about how long?

A. Four or five hours, I would guess, on Thursday, best as I can remember. And probably six hours yesterday.

Q. So you actually went through quite a -- ten or more hours of preparation for this deposition?

A. We met for that period of time, yes.

Q. Did you talk to anybody else about this deposition, before you came here and appeared today?

A. I'm sorry. About the deposition?

Q. Yes.

A. Not about the deposition, no.

Q. Did you talk to other people that -- and inform them that you were sitting for the deposition today as a deponent?

A. Are there other people that are aware that I was going to do a deposition today? Yes.

Q. And who would that be?

A. My wife is aware that I was appearing in a deposition. And perhaps several others in my immediate group. Because it was put on my calendar that way, and there were things that needed to be moved from my calendar in order to -- to be here.

Q. Are you familiar with the subject matter of this litigation?

A. I have read the complaint.

Q. Is that one of the documents that Mr. Beach showed you?

MR. BEACH: Go ahead.

THE WITNESS: Yes.

BY MR. HOPPER:

Q. So you obtained the complaint from him, not from some other source?

A. That's correct.

Q. What do you understand to be the claims made against RJR in this litigation?

MR. BEACH: Why don't you give him a copy of the complaint? Perhaps that would --

MR. HOPPER: I don't have a copy of the complaint with me. I'm just trying to get his general understanding and impression of what the -- if he understands what the lawsuit's about. As a witness in it.

THE WITNESS: Well, my general understanding is, is that it's a class action lawsuit against American Tobacco Company, and that there's, you know, specific bases, if you will, for that lawsuit.

BY MR. HOPPER:

Q. Okay.

When you said that you had spoken with other persons other than your attorney about this deposition today, have you spoken with any former employees?

MR. BEACH: Object to the form of the question.

MR. HOPPER: You can answer.

THE WITNESS: Well, what I said

was, is that I have not talked to anybody about this deposition, other than acknowledgement of it, with anybody other than Mr. Beach.

BY MR. HOPPER:

Q. Including any former employees?

A. I have not had any conversation with former employees about this deposition at all.

Q. "Former employees" meaning of RJR. I should be more specific in asking.

A. Correct.

Q. Okay. In your current capacity as senior vice president of brands marketing and operations, do you have any ties whatsoever to RJR Nabisco?

A. What do you mean --

MR. BEACH: Object to -- excuse me. I'm sorry. Object to the form of the question.

THE WITNESS: I'm not sure I know what you mean by "ties".

BY MR. HOPPER:

Q. Do you have any interactions or interface with RJR Nabisco in your current job at all?

A. It is extremely limited.

Q. You meet with them from time to time or have conversations with people at RJR Nabisco from time to time?

MR. BEACH: Object to the form of the question.

THE WITNESS: There are -- yes, there are meetings that I am involved with, with individuals at RJR Nabisco.

BY MR. HOPPER:

Q. Do you know the officers of that entity?

A. I know who most of them are, yes.

Q. Mr. Pennell, by virtue of your current position, do you have specific knowledge presently about the various other brands outside of the savings business unit?

MR. BEACH: In what respect?

BY MR. HOPPER:

Q. Are you privileged to various decisions that are made about the marketing of those other brands still in your current position.

MR. BEACH: Object to the form of the question.

Answer it, if you can, Cliff.

THE WITNESS: Well, broadly speaking, if there is any major significant decision to be made on any brand, it is generally our practice to work through that together, as a group consisting of those of us who are currently the senior VP's of marketing. But those are not the day-to-day issues, those are not -- you know, even all strategic issues, but issues of major implications or if they have impact on other brands within marketing.

BY MR. HOPPER:

Q. It would show up or come across your desk, then?

A. I don't know that it would show up or come across my desk; that is generally something that we would just sit down and -- and discuss. I would -- I would receive very little paperwork relative to brands that are not within my area.

Q. When you say "sit down," would that be with brand managers? Or who would that be with?

A. Generally, it is sitting down with business unit heads and discussing where -- you know, whatever that issue is.

But, like I said, that is only on those more significant larger scale things, not the day-to-day operations, nor the -- you know, the mid level decisions, if I could characterize them -- that's not a good way to characterize it, but... certainly any decisions made on the brands, I believe, are important, but there's a limited number of them that I would be involved in.

Q. If a brand manager for Camel came up with the hypothesis and expectation and vision to get rid of Joe Camel, would that be something you would get involved in?

A. Possibly. But not necessarily.

Q. If it came down from Andy Schindler to eliminate Joe Camel, would that come through you to those brand managers? Or would it go from -- I realize he's president; he can do, probably, what he wanted to do. But would he take you into consideration?

MR. BEACH: Object to the form of the question.

Answer it, if you can.

THE WITNESS: Possibly. I mean, I'd be speculating on whether he would or wouldn't. But not necessarily. Again, he certainly wouldn't go through me, because I don't have direct accountability for the Camel brand right now.

BY MR. HOPPER:

Q. Would you have knowledge of, on a day-to-day, or a week-to-week, or a month-to-month basis, or however it would be reported to you in some regimen, the knowledge of the shift in market share of any of the particular brands?

A. Yes.

Q. Would you know what would prompt that? Would you be privileged to that knowledge?

A. Not on a routine basis, no.

Q. You'd just see the numbers, then?

A. That's correct.

Q. In your former jobs you would not only have seen the numbers, but you would probably have also understood what might be prompting those changes, or at least as you -- as your group speculated whatever it might be?

A. Yeah. There's generally some level of analysis that takes place to try to understand what is happening with your business, be it positive or negative, in terms of the dynamics of what's going on. Yes.

Q. Sure. But as an officer in the company, you're certainly privileged -- as a senior officer in the company, you're certainly privileged to those numbers and that information now. So if Camel brand was dropping off substantially in market share, you'd be aware of it?

A. That's correct.

Q. Even down to that particular brand, correct?

A. That's correct.

Q. Even though it's not within your purview in the savings business unit, you'd still be aware of it?

A. That's correct.

Q. Same for Winston or Salem or --

A. That's correct.

Q. Tell me what the sports marketing function is that's presently underneath you, the sports marketing enterprise department, as you call it. What's that all about?

A. Sports marketing enterprises is the support function for many of the event activities, marketing activities, among adult smokers, that our individual brands participate in. That consists of the majority of what that group does.

There is also a new business development area within sports marketing enterprises, which has nothing to do with tobacco at all. It simply performs the similar function that it does for our brands, for other companies if they desire it.

That's a very small part of their function. They are largely there to support the brands in their event marketing activities.

Q. Please bear with me for a moment.

Would that be things like the various drag races and sporting events and things of that nature that fall within that area?

A. That would be part of it, yes.

Q. Can you describe for me the various or different sporting events and/or enterprises that you might relate to in that regard?

A. Are you asking for the ones that sports marketing enterprises oversees, or --

Q. Yes.

A. The Winston -- NASCAR/Winston Cup Series. There would be several other series under that whole Winston -- NASCAR/Winston Cup umbrella. Winston/NHRA -- or NHRA/Winston Drag Racing Series.

Q. What about motocrosses or motorcycle races?

A. I believe that we are still involved in super cross, but I don't believe -- I may have my terminologies wrong -- that we are involved in motocross. But it may be I may have it backwards.

Q. Sure.

A. But on a very limited basis, we're still involved in -- well, actually, I believe it is -- it's motorcycle road racing that we are still involved, in a limited capacity, but not motocross or super cross.

Q. All right. What about hot rod shows or cycle shows?

A. We still -- we do -- are involved, in a limited capacity, in some of the bike week activities that take place; but we are not involved in auto shows, to my knowledge, at this point.

Q. Tractor pulls, monster trucks?

A. No. I do not believe we're involved in any of that today.

Q. None of those events?

A. No, sir.

Q. You have been, in the past?

A. Well, I think there has been some involvement in some of those areas in the past. I'm not sure

of which ones and in what capacity.

Q. Wrestling matches?

A. Not personally aware of us involved -- being involved in wrestling matches.

Q. But you have been in the past?

A. I'm not aware of that at any point.

Q. So-called "Tough Man" competitions?

A. I'm not personally aware of that.

Q. Fairs, carnivals, things of that nature?

A. Would ask you to better define what you mean by "fairs" and "carnivals".

Q. Are there various types of fairs and carnivals that RJR either is a sponsor of or a participant in or has a booth or a product presentation presence, things of that nature? Any kind of fairs or carnivals.

MR. BEACH: In other words, your question is now changing from sports marketing --

MR. HOPPER: No, no. I'm sorry. That would be related to any kind of sports or sporting events. No, I don't mean the North Carolina State Fair. Maybe you're there too, but I'm not talking about that.

MR. BEACH: Events sponsored through or in which sports marketing enterprises is somehow involved, is your question?

MR. HOPPER: Still focused on that.

THE WITNESS: No, I'm not aware of any.

MR. HOPPER: Okay.

BY MR. HOPPER:

Q. I want to go into the marketing function a little bit more specifically again.

Is one of the duties in market research to obtain consumer attitudes towards smoking?

A. Could you explain more what you mean by that?

Q. No. Because I'd like you to tell me what you understand it to be.

MR. BEACH: Object to the form of the question.

BY MR. HOPPER:

Q. You understand what consumer attitudes are, as a marketing kind of guru and a person who's been in marketing for nearly 20 years. I don't mean that facetiously. I mean, I don't understand it and I think you probably do.

A. Well, let me clarify, number one, that I haven't been in marketing for nearly 20 years. I have been with the company for 18 and have been in marketing for about 12 of those, in certain capacities.

But I would ask for you to restate the question, because I honestly don't understand the question that's being asked.

Q. Does your marketing department or function or division, or however you describe it, conduct marketing research?

A. Yes. We have a marketing research department within marketing, yes.

Q. In-house?

A. Correct.

Q. Then you hire various marketing research firms to do your marketing research from time to

time? Outside firms?

A. We might. But I'm not clear on -- on how much we would or we wouldn't do that. I think that would just depend.

Q. Okay. I'm not really looking for how many times a year or anything, but you do utilize outside marketing research firms from time to time? You have had and you do?

MR. BEACH: Are you talking about Mr. Pennell and his specific responsibilities or are you talking about R.J. Reynolds --

MR. HOPPER: No. I said I was going to ask him some questions about marketing generally.

MR. BEACH: Fair enough. I just want to make sure --

THE WITNESS: Are you asking if we, as a -- as R.J. Reynolds Tobacco Company, have contracted out some of our research stuff to be done, our consumer research stuff to be done?

BY MR. HOPPER:

Q. Sure. I mean, I'm just trying to find out if within the marketing function at RJR that you do marketing research. And I believe your answer was yes.

A. Well the marketing research that is done internally -- we do do marketing research that is done internally. Those folks are accountable for it. And if they use an outside supplier to help them or to help facilitate that research, then that does happen, yes.

Q. Okay. In the course of conducting that marketing research, whether it's in-house or with an outside agency, is one of the things that is conducted research to obtain consumer attitudes towards smoking?

MR. BEACH: Object to the form of the question. It's pretty ambiguous. If you can answer it, go ahead.

THE WITNESS: Well, I don't know how to answer that -- that question, because I don't understand the question. I'm sorry.

BY MR. HOPPER:

Q. You routinely attempt to understand and appreciate your market and/or markets as a company, correct?

MR. BEACH: Object to the form of the question. You can answer it, if you can.

THE WITNESS: Yeah. As a -- as a part of how we conduct business is, is to understand our consumer of adult smokers, as best we can, yes.

BY MR. HOPPER:

Q. That's not so unbelievable, is it?

A. Not if that's the question that's being asked.

Q. That's the question that's being asked.

You try to survey or learn or gain information and are trying to understand your markets all the time, I would assume. It's just an ongoing function --

A. It's a not uncommon practice for us to try to understand consumer dynamics of our business among

adult smokers.

Q. And you -- you, either through outside research agencies or through your own various measures and efforts through your in-house market research function, you have or do attempt to understand consumer attitudes towards smoking?

MR. BEACH: Object to the form of the question.

THE WITNESS: I'm still not understanding what you are meaning by "consumers' attitudes toward smoking".

BY MR. HOPPER:

Q. Well what is it that you -- which word don't you understand of the English language that I've just put in front of you? Let's try to dissect it for a second.

MR. BEACH: Mr. Hopper, he just explained to you, I believe, that he said consumer attitudes towards smoking is ambiguous. Maybe -- if you could give him a little guidance as to what consumer attitudes towards smoking you're talking about, he, I'm sure, would be happy to try to answer your question.

BY MR. HOPPER:

Q. Well, what is it that you think I'm saying? Or asking.

MR. BEACH: Now, if you're a mind reader, you can answer his question.

MR. HOPPER: Let's not be facetious, Counsel. We don't have to get punchy with each other. You're from a reputable big firm, and I am too, so ...

THE WITNESS: If the question was consumers -- if I break it into consumers' attitudes in general, why they choose the brands they choose, why they smoke the brand that they have chosen to smoke, why they consider to smoke other brands, et cetera, the answer to that would be, yes, that is -- is something that is important for brands to understand about -- the brand management group to understand about their business.

If the question is why do people choose to smoke in the first place, or what have you, and headed in that direction, the answer is no, because that is not a part of the brand specific marketing research that we do. At least that I'm involved with.

BY MR. HOPPER:

Q. Is it a part of any research that you do?

A. I'm not aware -- or involved in it, if it is.

Q. You don't attempt to understand what prompts people to smoke or not smoke?

A. No.

Q. Why not?

A. Because we're interested in marketing our products to adult smokers who have made the decision to smoke. That is our universe. Our company takes that very seriously as a way of doing business, and that is how we approach it.

Q. Is it not an important function to continue to increase market share of your business?

A. Yeah. Increasing market share for a given

brand is important, yes. And how we --

Q. Or for any brand, right?

A. Or for any brand is. And how we do that is also clearly defined within our company.

Q. I mean, you're no different than Proctor & Gamble, you were talking about earlier, that, if they want more people to buy Tide, they're going to look at the market and try to determine how they can sell more Tide, correct?

MR. BEACH: Object to the form of the question.

THE WITNESS: I can answer that. That -- there is a part of that that's true, but there's a part of that that's very different.

I don't know how P&G and the folks on the Tide brand define their universe, but ours is defined very clearly and very explicitly as being adult smokers only.

BY MR. HOPPER:

Q. I'm not questioning you about who your smokers are, okay? I'm trying to understand how you go about marketing.

You, to some degree, and apparently quite successfully, have distinguished yourself in a marketing capacity in this company. You didn't even -- you don't even have an MBA in business and you don't have any formal courses in marketing. And, apparently, you know, you've distinguished yourself and have established a track record of considerable experience.

Now, I realize six of those years were in sales and twelve of them have been in marketing, one way or another. I think you know something about marketing, Mr. Pennell. I'm not saying that facetiously or in any way other than perhaps complimentary. I want to understand and know and learn what it is, as a senior officer in this company, you do to go about marketing your products, why you market them, why you don't market them, and I'm asking you some specific questions about that.

So please don't misunderstand that or think I'm asking you to crystal ball gaze here or anything, because quite frankly you did a good job of answering my question.

But I'm trying to understand if -- you're no different than any other company out there that's trying to remain in business and to make a profit. You're interested increasing your market share; is that not true?

MR. BEACH: Object to the form of the question. You can answer.

THE WITNESS: Well, as I've previously stated, an important aspect of any brand is profitably -- is having profitable market share, and growing that is preferable.

BY MR. HOPPER:

Q. The more people who smoke, the more brands of cigarettes you sell, I assume, correct? I mean, that's a pretty easy correlation to make?

A. No, I disagree with that. That's not what I said at all.

Q. I didn't say that's what you said, I'm asking

you another question.

A. I don't believe that you need more people to smoke. What I believe is, is that, for any brand to be successful, you need more of those people, who have determined that they desire and have chosen to smoke, to smoke your product. As long as they're 18 years of age or older, which is the market.

Q. There's a distinction here, however. That distinction I made, though, is whether you believe you need more people to smoke is one thing. I asked you the question: If more people smoke, you do sell more cigarettes?

MR. BEACH: I think he answered that question.

MR. HOPPER: No, he didn't answer that question, Counsel. And I'd appreciate if you'd let him think about it and answer it, if you would.

THE WITNESS: Well let me answer that question this way.

I will state again that I am not interested in and do not need more people to smoke. It is not our market. It is not our intention. Our universe is as I defined it: 18 years of age or older, who have already made the decision to smoke. All right?

But even if there were new smokers coming in, and it is not automatically going to mean success, because it depends on how effective one is at getting any adult who has determined that they choose to smoke to smoke your brand. It is more important, in my opinion, than how many there are.

BY MR. HOPPER:

Q. I understand that, from a value standpoint, okay? I appreciate and understand what you just placed a value on.

How many people smoke in this country right now?

A. Somewhere in excess of 40 million.

Q. Forty-five to 50 million is what I understand it to be. If 75 million people smoked, would you sell more cigarettes? Yes or no.

MR. BEACH: Object to the form of the question.

THE WITNESS: I can't answer that yes or no. It would depend on how effective of that 75 we were at having them smoke our products.

BY MR. HOPPER:

Q. Presuming that they all smoked your products, if you captured 25 more million people into your market -- I don't see what's so difficult about understanding that question.

If 75 million more people out there, whether they are using another brand or not, start using Tide to wash their clothes in, I think Proctor & Gamble is going to sell more Tide, unless there's something incredibly wrong and flawed with my thinking. And I'm trying to understand if the same thing is true here.

A. If there were more adult smokers in the marketplace, there would be more cigarettes sold,

yes.

Q. Okay.

Going back to this question of consumer attitudes, have you at any time obtained and monitored consumer attitudes to develop a strategic marketing plan?

MR. BEACH: Object to the form of the question. It's awfully ambiguous.

If you can answer it, Cliff, go ahead.

THE WITNESS: I'm sorry, I'm not following what you mean. I had trouble with the first part of that earlier, and now you've added -- I don't mean to be difficult, I just don't understand the question.

MR. HOPPER: I just don't believe you. You know what? I think if we were sitting in a market meeting and we were having a chat about all this, Mr. Pennell --

MR. BEACH: Excuse me.

MR. HOPPER: Hold on. Hold on. Hold on. One person at a time. Let me speak, and if you have an objection, then you certainly are entitled to make it. Okay? I'm going to ask him a question.

BY MR. HOPPER:

Q. I believe, if we were sitting in a marketing meeting and I was bringing up and using these terms "consumer attitudes" and "strategic marketing plan," that you would understand and know what I'm talking about. I don't believe this is all that difficult. You have 12 years of experience in marketing.

And my question is, is at any time, either through your outside agencies or through -- through your inside marketing function, that you have monitored and measured and obtained consumer attitudes about smoking, and -- and about your various brands, if you want to break it down to that, did that lead to or does that go into a strategic marketing plan?

Now counsel gets to speak.

MR. BEACH: First of all, I resent your suggestion and your comments about Mr. Pennell's testimony. As I sit here and have listened to your questions --

MR. HOPPER: Now, Counsel, hold it. What you resent and don't resent --

MR. BEACH: No, no, no.

MR. HOPPER: Hold it. Time out. Do you have an objection to make?

MR. BEACH: I object to your argumentative tone --

MR. HOPPER: Okay.

MR. BEACH: -- and your badgering the witness. He's expressed to you what it is about your question which is unclear to him.

MR. HOPPER: Okay.

MR. BEACH: He is answering your question.

MR. HOPPER: So your objection is that I'm being argumentative and I'm harassing the witness.

MR. BEACH: That's correct.

MR. HOPPER: Okay, you made your objection.

Let the record reflect that counsel for plaintiffs are speaking in a very low tone of voice. I'm not in any way harassing the witness here, I'm asking him very specific legitimate questions about the marketing function. And what counsel says or believes is resentful or not is personally his business, but that counsel for plaintiffs are merely trying to obtain information about the marketing function.

If the witness doesn't understand the question, it's perfectly legitimate for him to say: Counsel, I don't understand the question. And if that's what we have here, then I have an obligation to go back and restate the question for you.

And I think that may be what you're really getting at, so we don't have a fight.

MR. BEACH: No, we don't have any argument. But he asked you to do that and you said: I don't believe him. And I object to that kind of treatment of this gentleman, who's here -- a busy executive. He's taken time out to accommodate this lawsuit. And if you'd simply honor his request to clarify your questions, then this deposition can move along much quicker.

MR. HOPPER: Happy to do that.

What I referred to is: I believe, that if we were sitting in a marketing meeting, which I stated on the record, that this wouldn't be that hard to understand.

MR. BEACH: What you believe is obviously not relevant to this proceeding.

MR. HOPPER: That's exactly right, which is why I'm trying to ask these questions to understand marketing here. This is not some attempt to try to harass this busy, you know, senior officer of this corporation. I don't have any interest in doing that. I'm a lawyer. I'm trying to find out about marketing.

MR. BEACH: I'm sure that's the case. So, just if you can state your question in a way he can understand it, we'll keep -- keep moving right along, please.

BY MR. HOPPER:

Q. Earlier you went through this very succinct and articulate process of how you go about brand marketing. I mean, it was quite erudite in some respects, to me, because I don't know anything about marketing. And you used these terms. I can go back and repeat them to you. You used these terms, vision; you used these terms of ideas and programs, strategic -- you know, strategies, you used the term. And that's what I'm trying to get at. I'm just trying to understand.

You survey, you do research on your markets, no different than any other consumer product business. I assume that when you conduct that research, in all genuineness, you bring that information back in and in some way or another -- pardon me for my ignorance; I'm a lawyer -- that

goes into some kind of strategic marketing plan, in one way or another, does it not?

MR. BEACH: Object to the form of the question.

Go ahead and answer it, if you can, please.

THE WITNESS: I'll respond this way. As I've already said, getting adult smokers' input, relative to how they feel about a brand as it currently is or a brand as it might be if it was positioned different ways or what have you, and some of those various programs might be exposed to them, et cetera, is a part of the process of establishing strategies and individual programs on a given brand. That is a part of the -- the process.

BY MR. HOPPER:

Q. Okay. And you told me earlier that you -- as you go through this process, from hypothesis to vision to concept to strategy, that -- is it correct to say that those strategies are then used to develop advertising campaign for RJR brands?

MR. BEACH: Object to the form of the question.

Answer, if you can.

THE WITNESS: I think -- if I'm understanding the question correctly, I think that it is fair to say that, in order to do anything from a creative standpoint, a promotion standpoint, advertising or what have you, they are best accomplished when there is a vision and underlying strategies of what is to be accomplished, so that you can form those hypotheses, as I termed -- as discussed earlier, to go find out whether or not those are viable options in the marketplace.

BY MR. HOPPER:

Q. And you -- and you do that through marketing research, through marketing development, correct?

A. Marketing -- you know, consumer research is -- is one of the vehicles in which we obtain that learning, yes.

Q. There are others?

A. There are other what? I'm sorry.

Q. Other vehicles? You said consumer research is one of the vehicles.

A. Well, consumer -- yeah. Exposing stuff to adult smokers is the way that is our primary vehicle of getting input back on hypotheses that we have.

Q. What do you mean when you say "exposing stuff"?

A. Either through qualitative or quantitative research.

Q. What comprises qualitative research?

A. Qualitative group -- research could be, you know, focus groups --

Q. Focus groups?

A. -- where you sit down with adult smokers. In that venue.

Quantitative is of a larger sample size, generally conducted in one-on-one interviews against adult smokers.

Q. Well, through that process, then, you gain

consumer attitudes towards smoking, correct? You bring them in in focus groups?

A. What we gain is information on why they choose to smoke the brand they have, why -- how do they feel about other brands that might be available to them.

Q. Okay.

A. I want to make the distinction between that, because it's -- it is important, in my mind, between why you -- why you choose the brand you have or how you feel about other brands versus why you smoke or don't smoke. Because that is not part of the research process for us on our brands.

Q. And that's precisely why you have different brands, isn't it?

MR. BEACH: I object to the form of the question. I don't understand it.

If you do, Cliff, go right ahead.

THE WITNESS: If your question -- if your comment was there that is why there are different brands is because there are different consumer wants --

BY MR. HOPPER:

Q. Wants? W-A-N-T-S?

A. Right.

-- and expectations of their products and what they offer, then, yes, I would say that's -- that is the case.

Q. And then you take these brands and you attempt to market these brands to different consumer groups, true?

A. We take -- take that information and use it to help us market our products against adult smokers on different criteria.

Q. You take the information, and you go through this process you described earlier, and you create themes which go into advertising, that creates notions, or however you refer to them in the marketing department: Stylish, up-scale, laid back. Those themes then get promulgated into advertising campaigns for you to market these brands to different consumer groups, true?

MR. BEACH: Object to the form of the question.

Answer it, if you can.

THE WITNESS: Well, you ask a lot there.

The best way I know to -- to answer the question is, is that, once we have put or determined or received input from consumers, relative to whatever point and stage of the process it is, the process being identified as you're in that hypothesis stage or you're in the actual I'm ready to put programs in the market stage, you get their input back on that, relative to whether or not they feel this is something that appeals to me or doesn't appeal to me.

BY MR. HOPPER:

Q. Exactly. In other words, RJR does not try to have all brands appeal to all people, correct?

A. Well that's a pretty broad statement, all brands -- that we don't try appeal to -- all brands to all people.

No. We -- our different brands are -- are positioned in different ways. And adult consumers or adult smokers respond to those positionings in different ways as well.

But a brand like Doral is positioned very differently than a brand like Vantage or Camel.

Q. I understand. I think I'm getting it.

So what are the target consumers for each of those brands?

A. I'm sorry? What are the -- could you restate your question?

Q. What are the target consumers for each of those brands?

A. For -- like for Doral?

MR. BEACH: Doral, Vantage, and Camel, I believe.

BY MR. HOPPER:

Q. Well, Camel, Winston, Salem, Doral, any of the brands that you currently market.

MR. BEACH: Could you read the question back again, please. I'm sorry.

(WHEREUPON, THE QUESTION WAS READ BACK BY THE COURT REPORTER AS FOLLOWS:

What are the target consumers for each of those brands?)

THE WITNESS: Well, I'll start with Doral. Doral is a brand that is -- is positioned against adult smokers who are, first and foremost, price sensitive.

And I would also like to reinforce the confidentiality of -- of what I'm saying, because it's --

MR. HOPPER: You don't have to. You're right. I understand. We're there with you.

THE WITNESS: But Doral is -- is positioned among adult smokers who are price sensitive, but who also deserve or desire to have some quality and image expectations in their product. And that is a wide range of people.

BY MR. HOPPER:

Q. Such as?

A. Such as?

Q. Meaning -- "price sensitive" meaning they don't want to pay as much as somebody else might for a cigarette -- for a pack of cigarettes?

A. Or they don't believe that the price of a full price product is worth that.

Q. Would Doral be skewed toward a certain segment of the population?

A. There is -- there would be segments of the population that would be more inclined to have those expectations of a product.

Q. Such as women?

A. For Doral, that would not be a very big skew. No. It is -- it would be relative that opportunity, about equally male/female. It would skew older, you know, more 35-plus adult smokers, than it would be 18 to 34-year-old smokers that participated in that -- that area or had those expectations.

Q. What brands would you market for women? You

referenced one earlier to me; I just don't simply remember which one it was.

A. Well I believe my previous reference was talking about More and Ritz skewing toward women in terms of who smoke the product, not necessarily how the brand was positioned or marketed to. There is a difference.

We do not have, currently - I'm trying to think - any brands in our current brand portfolio as a company that are marketed specifically to women, if that's your question.

Q. Okay. But if your market research, that information you talked to me about a minute ago in that process you described, is coming back to you and your focus groups are telling you, you're getting information, that more women are smoking a certain brand, then you know that women are smoking it, so you're marketing to them, correct?

A. If -- if marketing research determined -- or we looked at that marketing research among adult smokers and saw that there was a competitive brand who was showing progress in a given area and that was then coming as a result of this, that, or the other, yes, we would pay attention to that.

Q. Okay.

MR. HOPPER: Let me confer with my counsel for just a minute. We might be close to taking our lunch break.

THE WITNESS: Okay.

(RECESS TAKEN FROM 12:07 P.M. TO 12:08 P.M.)

BY MR. HOPPER:

Q. With respect to the skewing that you referred to earlier, and then again a moment ago, if you learned that one of your brands is skewed toward women, can you tell me which brand that may be presently?

A. If we have a brand that is skewed toward women?

Q. Uh-huh.

A. In terms of index of its business, male versus female?

Q. Yes.

A. Our More brand is heavily skewed female in terms of who the -- what its franchise consists of in terms of adult smokers.

Q. And I believe, as I've see the advertisements out there for More, they tend to be advertising that's aimed at women?

A. It has been some time since we have run advertising for More. But when we did, it was -- whenever there was user image in it, it was female, yes.

Q. Can you tell me what the skew is presently?

A. I don't know that number exactly, but I would say it is somewhere around 70 percent, 65 to 70 percent female.

Q. With respect to the price sensitive products such as Doral --

A. Uh-huh.

Q. -- how does the -- how does the price relate to your cost?

MR. BEACH: Object to the form of the question. I don't -- if you understand it, you

can answer it, Cliff. Do your best.

BY MR. HOPPER:

Q. Obviously I'm referring to cost of manufacture.

A. We work on -- I guess the best way I can answer this is that we work on lower margins for our value brands than what they are for our full price brands.

Q. They're not loss leaders, though?

A. No.

Q. You make money on them?

A. Absolutely.

Q. I like that.

What happened to Ritz?

A. It didn't work and we discontinued it.

Q. Do you know why?

A. It's a long time ago. I don't recall exactly the reasons that it didn't work. I just remember that the brand performed -- performed under expectations, and we did not renew our license agreement on it to pursue it.

Q. Do you recall what the skew was on that?

A. I don't remember exactly, but I think it -- it skewed female, but not to the degree that a brand like More has its franchise.

Q. Is there something you did with the marketing and advertising of More that you think made it more effective than Ritz?

MR. BEACH: Object to the form of the question.

BY MR. HOPPER:

Q. That if you --

A. No. No, I don't. I think the reason that More did better than Ritz was because it had a product pointed difference and had been out there for a while, for several years. It was the first entry into the marketplace in a unique configuration like it is, as a -- it's 120-millimeter long, skinny cigarette with brown paper, dark brown paper, is what the parent style or the majority of that brand's business is -- consists of.

Q. You said "parent style"?

A. Well, I mean, it's -- there are six styles.

Q. Appearance. You said appearance style, correct?

A. There are -- those were the two initial styles. When I said "parent style," there are like six styles of More products, six different configurations.

Q. Can you spell the word you're saying for me? I'm --

A. Parent.

Q. P-A-R-E-N-T?

A. Correct.

Q. What's that mean?

A. Well, what that means is, is those were the initial styles -- my own vernacular of talking about it, those were the two initial styles of More that were introduced. And, over time, additional styles have also been introduced.

Q. Ah. So it's progeny, meaning --

A. That's right.

Q. -- that's the parent and then it's progeny.
All right. I'm trying to understand marketing.

A. Have not been in the marketplace as long as the original styles. Perhaps "original" is a clearer way to explain it.

Q. I understand.

Are you -- are you aware of other of your competitors' products that might be skewed toward women?

A. That have a -- more -- a disproportionate amount of their business on an index -- rather a percentage of their business female versus male, irregardless of how they're positioned?

Q. Yes.

A. I'd have to take a few minutes to think about that.

Eve cigarettes.

Q. Who manufacturers those?

A. I believe Liggett Myers does.

Q. Do you know what the skew is on that?

A. I have no idea.

Q. Somebody in your marketing department probably does, though, right?

A. I would say that information is available. I don't know that there's anybody in there that could recall the skew of Eve cigarettes' male/female development off the top of their head, but ...

Misty. A brand called Misty.

Q. Who manufactures that?

A. I believe Brown & Williamson Tobacco Company manufactures that.

I would suspect that Virginia Slims would have a slight female skew to it, manufactured by Philip Morris.

There are probably others. I just -- they just don't come to my mind right now.

MR. HOPPER: Well, why don't we take a break for lunch. How long do you need?

MR. BEACH: We can do it quick, if it will get us out of here today.

MR. HOPPER: Do you have a preference how long? Forty-five minutes?

MR. BEACH: Thirty-five minutes?

MR. HOPPER: Forty-five minutes.

MR. BEACH: Oh, 45 is fine.

(LUNCH RECESS WAS TAKEN FROM 12:15 P.M.
TO 1:09 P.M.)

BY MR. HOPPER:

Q. Back on the record.

Mr. Pennell, before we took our lunch break, I was asking you some questions about your markets and skewing. Tell me what you understand or believe "skewing" to mean.

A. Well, our conversation just before lunch, as I recall it, was relative to what brands had a disproportionate or a larger amount of their business female than others. So, I mean, that's really an outcome versus anything else.

And, so, the terminology that I used of skew there was, is that their business happens to skew more female -- and we were talking about the More brand. It happens to skew more female than it does male.

Q. More females purchase that brand than males?

A. Correct. That is the skew of that brand -- that's the outcome. That is the profile of that brand in terms of who its users are and where its volume comes from.

Q. That didn't happen -- just happen by accident.

A. Well, in More's instance, it did develop that way. Yes. Because, as I recall -- as I have been told the history of the More brand, because it predates me with this company, it was initially expected to be an equally male/female brand in the marketplace when it was introduced. It ended up that its business ended up, from a profile standpoint, being significantly more female than male.

Q. But you've told me earlier that RJR conducts marketing research, correct?

A. Yes, sir, we do.

Q. And on the record you told me that that marketing research is done in-house and done by outside agencies, correct?

A. That research is -- is handled in-house by our research department and, at times, they utilize outsource -- outside suppliers.

Q. And that you take the information that you receive through marketing research and you push that information through this process that we've been over more ways than one, correct?

A. We utilize that information relative to why consumers choose the brands they do.

Q. I mean, we don't -- you've already answered --

A. As part of the process.

Q. -- you've answered the questions, and I'm trying to get to a point.

And you take that information, eventually, and you implement it -- as you described your job, you implement, you execute. And you use two avenues, or "vehicles," I believe, is the word you chose: Advertising and promotions. Correct?

A. Well, advertising and promotion are the broad --

Q. Yes.

A. -- areas, yes.

Q. That you implement these marketing strategies through ad campaigns and through promotions, correct?

A. Those would be examples, yes.

Q. So, in so doing, skewing doesn't just happen, because you are aiming a brand toward a particular market, based on that information that you've received from that market, correct?

A. I'm sorry. Could you ask that again? I'm sorry.

Q. I said, skewing doesn't just happen by accident; because of that fairly sophisticated process that you've undertaken, you aim that brand at a particular market.

MR. BEACH: Object to the form of the question.

You can answer it, if you can.

THE WITNESS: I don't think one or the other is always true, as I understand your question. There are times that a brand is put into the marketplace and it develops certain dynamics about who buys that brand, what adult smokers buy it. Then there are examples of where brands are positioned against adult smokers that fit certain criteria.

BY MR. HOPPER:

Q. But you're not about to sit here and tell me that RJR's marketing is so laid back and so submissive, meaning that you're not at all aggressive, about marketing your products in such a way to try to penetrate or capture or reach a market.

MR. BEACH: Object to the form of the question.

You can answer it.

THE WITNESS: What I'm -- what I was simply trying to answer was, is that there is not -- the outcome of how many brands -- the profile of who their adult buyers are is not always just because you sought to have it that way.

BY MR. HOPPER:

Q. Yeah. I'm not -- first of all, I'm not arguing. But, secondly, I understand that and understand your answer in that regard.

My question to you is, is that you start this process, as you said earlier, in many instances, or at least in some instances, even with focus groups, and obtain some fairly significant information, and it goes through the process I described and you position those brands relative to that market; is that correct?

MR. BEACH: Object to the form of the question.

If you can, answer it.

MR. HOPPER: Can we -- could we go off the record for just a second.

(DISCUSSION OFF THE RECORD FROM 1:16 P.M.

TO 1:18 P.M)

MR. HOPPER: Can you read the last question back please?

//

(WHEREUPON, THE QUESTION WAS READ BACK BY THE COURT REPORTER AS FOLLOWS:

QUESTION: My question to you is, is that you start this process, as you said earlier, in many instances, or at least in some instances, even with focus groups, and obtain some fairly significant information, and it goes through the process I described and you position those brands relative to that market; is that correct?)

MR. BEACH: Object to the form of that question. You can answer it, if you can.

THE WITNESS: I'm just trying to flow through -- through all of that.

Yeah, I think that's generally correct,
yes.

BY MR. HOPPER:

Q. So you position your brands; is that correct?

A. Every -- as a general rule, I'll say, as a general rule, brands are -- are positioned a certain way in the marketplace, yes.

Q. Because, at times, after you position those brands, you actually go back and reposition brands; is that correct?

A. Yes. Brands can be repositioned in the marketplace, yes.

Q. And, in fact, that's what you testified to earlier, that you attempted to do with Camel brand, correct?

A. The Camel brand was repositioned in 1987, I guess it was, late 1987 or 1988. Early 1988.

Q. Mr. Pennell, as a part of the process that you've been describing for me, I asked you at times if you utilized focus groups, and you've told me yes. Is that correct?

A. That is correct.

Q. Did you utilize focus groups for the age group 18 to 24 more than any other focus groups?

MR. BEACH: Could you repeat the question, please?

(WHEREUPON, THE QUESTION WAS READ BACK BY THE COURT REPORTER AS FOLLOWS:

QUESTION: Did you
utilize focus groups for the
age group 18 to 24 more than
any other focus groups?)

THE WITNESS: Could you
characterize that -- is that overall, throughout
the time I've been in marketing, irregardless of
which brand I've been on, just overall?

MR. HOPPER: Yes.

THE WITNESS: No, sir. I would say
that my experience was not that we spent more time
among 18 to 24-years-olds than other groups.

BY MR. HOPPER:

Q. That you did not or have not?

A. Did not. Have not. That would not be a fair representation, that we spent more among 18 to 24-year-olds, than not, in terms of my involvement in marketing.

Q. Why not?

A. There wasn't any reason to. You know, the -- the consumer research that I -- you know, I needed, I was involved in, or felt needed to be done, et cetera, was -- was not specific to 18 to 24, to the degree that the outcome was more focus groups done among that age group than -- than not.

Q. What about with respect to a specific brand? Did you utilize focus groups in the 18 to 24 age bracket with respect to a specific brand?

A. I would say, during the period that I was involved with Camel, perhaps -- and I don't recall the actual percentage or number, but perhaps half of the groups were among the 18 to 24-year-old group -- age group of adult smokers. But, you know, if I contrast that, you know, for other brands, you know, it would have been, you know,

different. It does vary by brand, as I mentioned.

Q. With respect to that component of your responsibility as senior vice president of marketing and operations, that is the sports enterprises department, one of the questions that -- that I failed to ask you in that series of types of sporting events, do you sponsor rodeos?

A. I believe this company has sponsored rodeos in the past, but we currently do not.

Q. Would that have been brand specific to -- to Camel?

A. No. If I'm not mistaken, there again, that goes back way beyond my involvement in it and perhaps even time with the company, I'm not sure, but I believe it was with the Winston brand that sponsored rodeo. I do not recall us sponsoring rodeo on Camel. I certainly don't recall that during any of the time I was involved with the Camel brand.

Q. With your marketing hat on, do you get to go to any of these various sporting events or do you ever get invited? Or do you ever choose to go, feeling as though it might be part of your job to --

A. I have attended, yes. I have attended some of these sporting -- or these special events that we sponsor.

Q. What kind of special events would that have been that you have personally been to?

A. I have attended NASCAR/Winston Cup races.

Q. That's located where?

A. Well, it depends on where the particular race is being run. That is a series sponsorship in -- that takes place all over the country.

Q. Who decides where it's located? NASCAR?

A. NASCAR determines the -- the locations for those events.

Q. Okay. Do you or your department ever get involved with NASCAR in determining where those events should be located?

A. I would not think so, no, sir.

Q. Do you know if you have or haven't?

A. I don't know whether we have or haven't, but I would not think so.

Q. Have you, personally?

A. No, sir.

Q. Is it possible that you -- that your company could have?

A. I would believe it to be highly unlikely, if not impossible.

Q. As the prime sponsor?

A. Despite being the series sponsor.

Q. What promotional activities under that category, distinct from advertising, has RJR conducted in relation to Camel since 1987?

A. In a -- in a specific special event?

Q. I'd like to know generally. And then, if you have the knowledge of specific things, since you've been around since then, maybe you can tell me specifically.

A. All right. But, let me clarify the question, if I could.

Q. All right.

A. Are you asking what specific events did we sponsor or what, within an event, would be the type activity that was conducted at -- as part of that sponsorship?

Q. Well, why don't you tell me both, but be sure we're talking about Camel brand.

A. Okay. Well, then, why don't we start with what Camel may have, or best I can recall, events it has sponsored -- since 1987, was the --

Q. Yes, sir.

A. I believe it was involved in event sponsorships for motorcycle races. It has a NASCAR/Winston Cup Series car entry that it sponsors, team sponsorship. I believe that it had team sponsorships for Camel in NHRA drag racing, at some point during that period. I believe there was a brief sponsorship of the mud and monster truck series; I don't know the name -- or remember the name of that series. And there may be others, but that's really all that I can think of, reflecting on it now, that -- that I recall that they were event sponsors or had a team sponsored within a -- an otherwise established series.

Q. I haven't been to any of those. So, tell me, would there be Camel logos and Joe Camel pictures and various promotional materials noticeable at those events, as its prime sponsor -- as their prime sponsors?

MR. BEACH: Object to the form of the question.

You can answer it.

THE WITNESS: I think, as a general rule, for those that we were a series or sponsored the event itself, there would be the event logos, sponsorship logos, that would be at those events, as well as in, you know, any advertising of the event as part of that sponsorship series.

But with the team sponsorships themselves, that is generally much more limited to that -- the vehicle in both of those instances, the -- formerly drag racing and currently NASCAR/Winston Cup Series. The car would be, largely speaking, in terms of at event presence, that presence.

BY MR. HOPPER:

Q. That's what I was going to ask next, is, if I were to look at the car, I would see Camel emblazoned on it, in one way or another, or Joe Camel on it, or something to that effect.

A. Yes.

Q. Con --

A. The name of the brand, you know, and -- you know, actually in print or in some other form. But, yes --

Q. Conspicuously?

A. -- brand registration.

Q. Conspicuously.

A. Prominently on the vehicle?

Q. Yes, sir.

A. I would say, as a general practice, the sponsors of -- of any of the team sponsorships put their brand prominently on their vehicles, yes.

Q. In the Winston Cup, it would be the Winston

brand emblazoned prominently?

A. Well, in Winston Cup, they do not sponsor a team, they are the sponsor of the series.

Q. Right.

A. So the representation there is, is the NASCAR/Winston Cup Series. Whereas for a team entry, like the Camel car, it would be a representation on that car of that brand.

Q. Have you been to these events?

A. I have -- I have been to a Winston Cup -- NASCAR/Winston Cup event, yes. I've been at -- and, as I said earlier, I've been to the -- the NHRA Winston drag racing event.

Q. Do they seem to be pretty successful or pretty well attended?

A. Yes, they are well attended.

Q. Are there kids there?

A. Yes, there are -- there are kids in attendance at these races.

Q. And families?

A. And there are families at these races.

However, research that has been conducted indicates that the median age of attendees at these events is about 36 years of age, and that less than five percent to six percent of the attendees are under the age of 21.

Q. You've been to them, though?

A. That's correct.

Q. And you've seen kids there?

A. I just acknowledged that --

Q. Have you taken your kids, your two boys?

A. My boys have not been to a Winston Cup race with me, no, sir.

Q. Have they been to any RJR sponsored events, such as the ones you've just described?

MR. BEACH: Sports events, I'm sure you're talking about.

MR. HOPPER: The ones he just described.

THE WITNESS: I don't believe they have, because I've been there on company business and in a business function format.

BY MR. HOPPER:

Q. Would it be your impression that -- that the kids, regardless of the percentage who attend these, or with their parents or families, see or notice or read the Camel sponsorship or the Winston sponsorship, if they're of an age where they can read and see it?

MR. BEACH: Object to the form of the question.

You can answer it.

THE WITNESS: Well I would suspect that the answer to that would be yes, if it was visible and present at those events.

BY MR. HOPPER:

Q. And if Joe Camel's picture or character was portrayed somewhere there, they could see that?

A. If that was done and portrayed there, they would be able to see that.

Q. Now or at any time while you've been employed at RJR, did RJR advertise or direct its advertising to persons 18 years or older?

A. I'm sorry?

Q. Now or at any time while you were employed by RJR, has RJR advertised or directed its advertising to persons 18 years old or older?

A. I would say that all advertising R.J. Reynolds has run, since I have been there, was against the opportunity of adult smokers, 18 years of age or older.

Q. What do you mean when you say "against opportunities"?

A. Well, I mean, that is --

Q. Is that marketing language?

A. That is the universe that -- as I characterize it, the universe that we recognize as -- as our prime prospect or the universe that is available to us, is smokers 18 years of age or older.

Q. During that same time from when you joined RJR until now, did RJR ever direct ads to appeal to smokers under the age of 18?

A. No.

Q. So it's your understanding that RJR ads were intended to appeal to a person on their 18th birthday but not anytime before?

A. That's not what I said. What I said was --

Q. Why don't you just answer the question?
MR. BEACH: Why don't you just let him finish his answer, please.

Can you read back the prior question?

(WHEREUPON, THE QUESTION WAS READ BACK BY THE COURT REPORTER AS FOLLOWS:

QUESTION: So it's your understanding that RJR ads were intended to appeal to a person on their 18th birthday but not anytime before?)

THE WITNESS: We do not -- we do not market our products to consumers under the age of 18 -- or smokers under the age of 18. We conduct no research among individuals under the age of 18. As a matter of fact, as of right now, it is smokers 21 years of age or older. And that is our practice, that is our policy, and that is our expectation.

BY MR. HOPPER:

Q. If RJR didn't advertise to anyone under the age of 18 or market its products to anyone under the age of 18, would there have been any reason for them to keep information with regard to the sales of cigarettes to kids under the age of 18?

MR. BEACH: Object to the form of the question.

Answer it, if you can.

THE WITNESS: Can you --

BY MR. HOPPER:

Q. If RJR didn't -- or hasn't advertised to anyone under the age of 18 or marketed its products to anyone under the age of 18, would there have been any reason for them to keep information with regard to the sales of cigarettes to kids under the age of 18?

A. I am not aware that we track sales of

cigarettes to anyone under the age of 18. In fact, it is our policy that we don't.

Q. Do you know of incidents of persons under the age of 18 who smoke?

A. Personally?

Q. Personally.

A. Yes, I know people who are younger than 18 that smoke.

Q. Do you believe that RJR knows and understands that people who are under the age of 18 smoke?

A. Well, you're -- you're asking me to speculate on whether the company believes as I do personally, or has personally observed or knows someone that -- under the age of 18 that smokes. I would say, as a general practice or outcome, that people with this company do -- have observed or do know people who are under the age of 18 that smoke. But that is different from whether or not that is our policy, that is our practice, or that is our expectation.

Q. Are you aware of the fact that the national household survey on drug abuse for the United States in 1991 promulgated statistics where they showed that 16 percent of adults who are daily smokers begin smoking by the age of 12? Are you aware of that statistic?

A. No, I'm not.

Q. Are you aware that that same unit of government promulgated a statistic, whereby they stated that 37 percent of adults who are daily smokers begin smoking by the age of 14?

A. No, I am not.

Q. You've never heard of that statistic before?

A. No, I have not.

Q. Are you aware that that same unit of government promulgated a statistic in 1991, whereby they claim that 62 percent of adults who are daily smokers begin by smoking by the age of 16?

A. No, I am not.

Q. And that they promulgated a statistic that 89 percent of adults who are daily smokers begin by smoking by the age of 18?

A. No, I'm not aware --

Q. Did it ever come up in any of your marketing meetings or have you ever discussed it in any of your marketing teams or brand teams that the knowledge that only 11 percent of smokers take up the habit after 18?

A. I am not. And to my knowledge, we have never been involved in any discussion relative to that data or any of that data.

Q. So you don't think that, to your knowledge, RJR has ever kept any information relative to persons under the age of 18 smoking?

A. Can you define "kept"?

Q. That you hold in your files, that you have data, that you have information, either on databases in your computers, in hard copy files, in however means of storage that you could probably tell me that you organizationally keep.

A. I am not personally aware of that, no.

Q. Have you ever talked to anybody else who has -- who has knowledge of that within RJR, either in marketing or in any other area of the company?

A. No, I have not. It is our policy and practice that we market our products to -- and recognize the smoking universe as being 18 years of age or older. And market our products to smokers 21 years of age and older. So there would be no need for that information.

Q. Have you ever heard of the William Esty Company or the National Family Opinion?

A. I believe that William Esty is an advertising agency.

Q. I believe that's correct.

A. And the other one was -- I'm sorry?

Q. The National Family Opinion, the NFO.

A. I believe that is a -- if I'm not mistaken, a company that tracks consumer purchase patterns and information.

Q. Were you aware that William Esty did a study regarding cigarette smoking among high school students?

A. No, I was not.

MR. HOPPER: Mark that, please.

(PLAINTIFFS' EXHIBIT NUMBER 2 WAS MARKED FOR IDENTIFICATION)

BY MR. HOPPER:

Q. Mr. Pennell, I'm about to show you what's just now been marked as Plaintiffs' Exhibit Number 2, entitled the Youth Research Institute study regarding cigarette smoking among 7,529 high school and college students in 80 cities throughout the United States, October to November 1959, a summary of the findings.

Do you recognize this document? Take as much time as you need to review it.

(WITNESS REVIEWS DOCUMENT)

MR. HOPPER: We can be off record here. I should have told you.

(BRIEF PAUSE IN PROCEEDINGS)

MR. HOPPER: Back on the record.

BY MR. HOPPER:

Q. During the break, you had an opportunity to review the document previously referred to as Plaintiffs' Exhibit Number 2. Do you recognize this document?

A. No, I do not. I've never seen it.

Q. Do you know if this document was ever kept in any form or in any way at RJR, in the time that you've been employed by the company?

A. I have no idea. I have never seen it.

Q. Do you have any knowledge or do you know of what's referred to as the National Family Opinion?

A. I believe, as I stated earlier, I think that is a research organization that captures consumer purchase patterns for a wide range of consumer products.

Q. Is that something that RJR has kept in its files?

A. I'm not familiar with any NFO stuff. And I know we certainly don't use them now, and can't recall whether we did or we didn't.

Q. Is it true that the NFO information pertaining to marketing of cigarettes to kids age 14 to 17 had been kept in a book at RJR for quite some time?

MR. BEACH: Object to the form of the question.

THE WITNESS: I just told you that I have no knowledge of this document. I have never seen this document at RJR in any capacity, way, shape or form. So ...

BY MR. HOPPER:

Q. Is it possible that other people who worked in marketing at RJR would have known about it?

A. I don't know the answer to that. You're asking me to speculate. But I would -- in speculating, would say no. This document was written in 1959. And this document is inconsistent with the way, you know, we do business at R.J. Reynolds, and I would be very surprised to find this there.

What is also not here is what came as a result of -- of this -- you know, this memo. It was sent by an advertising agency providing information to someone -- one, it appears, whom I don't know, at R.J. Reynolds, and I don't know what the response was back. Nor if this information was used in any capacity at all. I just don't know.

Q. But it was sent to R.J. Reynolds, wasn't it?

A. It was sent to an individual at R.J. Reynolds. I don't know who they are, what title they were at, et cetera.

Q. What's the person's name at RJR that it references?

A. A Mr. W. A. Sugg.

MR. BEACH: S-U-G-G.

MR. HOPPER: And referenced as Archie, I should add.

BY MR. HOPPER:

Q. Now, a moment ago you mentioned that you were aware of the National Family Opinion?

A. I believe that -- you asked me if I knew if -- who they were and what they did. And I responded that's who I thought they were and what they did.

Q. Do you know if RJR ever contracted with the NFO?

A. I'm not sure of that answer, but I think that perhaps they did at one point.

Q. Do you know that the NFO has done market studies to obtain information on persons under the age of 18.

A. I'm not aware that any research has been done for R.J. Reynolds under the -- for individuals under the age 18.

Q. In the contracts that you believe that RJR has held with NFO, isn't it true that RJR has worked considerably to shape the format and the direction and the aim of that -- of that NFO contract?

MR. BEACH: Object to the form of the question.

THE WITNESS: I don't know that at all, and have never dealt personally with NFO in any capacity.

BY MR. HOPPER:

Q. Are you telling me, that during your employment of nearly 20 years with RJR, that you

don't recall ever seeing any reports, any data, any books or any information at all about smokers under the age of 18? You're under oath.

MR. BEACH: That's unnecessary.

The witness is well aware he's under oath.

MR. HOPPER: We went off the record. I want to just be sure that he remembers that.

THE WITNESS: I can't recall having ever seen any information provided to me that spoke to anything relating to underage smoking.

BY MR. HOPPER:

Q. Including any incidence of smoking, rate, volume, et cetera?

A. To the best of my ability, I can't even recall that on any -- in any capacity. That or any other capacity.

Q. If I told you that one of your other key marketing employees recalled that the NFO actually did research on smokers under the age of 18 and that that data was kept at RJR, would it surprise you?

A. Well I would have to say that it would surprise me, since I have no recollection of having seen or been exposed to any of that data, if, in fact, it did exist, and would challenge the -- the degree in which that information was kept or made available and, certainly, to what degree it was utilized. Because I know that that is inconsistent with our practices and procedures and expectations as a company.

Q. I understand, at this point in the questioning, that you don't have personal knowledge of it, but I'm letting you know that one of your key marketing employees has testified recently to the fact that it has been included and kept at RJR and, in fact, has identified books specific to that issue raised in the question. I want to know if you know whether or not any of those books exist. Just to jog your memory for a moment.

A. I'm sorry. Books?

Q. Books on the NFO data obtained on smokers under the age of 18.

A. I'm not aware of those books.

Q. Okay. Then I suppose you don't have any idea whether or not those books would have been used by the marketing department to track brand shares?

A. Not that I'm aware of.

Q. Or switching data?

A. For underaged smokers?

Q. Yes.

A. Not that I'm aware of.

Q. Or switching behavior?

A. Not that I'm aware of.

Q. Or perhaps to predict testing screening?

A. Not that I'm aware of.

MR. HOPPER: If you would, mark that, please.

(PLAINTIFFS' EXHIBIT NUMBER 3 WAS MARKED FOR IDENTIFICATION)

MR. HOPPER: Mr. Pennell, I'm going to show you a document here that's been marked as Plaintiffs' Exhibit Number 3 for the record. And

I'd like for you to take a moment and read through that carefully.

We'll go off the record during the time he's doing that.

(WITNESS REVIEWS DOCUMENT OFF RECORD)

BY MR. HOPPER:

Q. Back on the record.

Have you had an opportunity to review Plaintiffs' Exhibit Number 3?

A. Yes, I have.

Q. Can you tell me what the letterhead is that that letter is written on, please?

A. R.J. Reynolds Tobacco Company.

Q. And can you tell me who it's directed to in the address heading?

A. A Mr. Stanford Odesky of the National Family Opinion.

Q. And does that -- does that letterhead have a date on it?

A. March 15th, 1974.

Q. And I refer you over to the second page, to item number 10.

Excuse me. Before we address that, it appears that this letter is written by whom?

A. It appears this was written by someone in the marketing research department to this --

Q. That's the marketing research department of R.J. Reynolds, correct?

A. Correct. To an individual at the National Family Opinion.

Q. And can you tell the name of the person from the RJR marketing research department that wrote the letter?

A. It says here it is a Joan F. Stuart.

Q. Now, that was before you started to work at RJR, correct?

A. That is correct.

Q. That is, 1974 was earlier than you began your employment there?

A. That's correct.

Q. Because you began your employment in 1979 in a sales capacity, correct?

A. That is correct.

Q. Did you ever meet or know Joan Stuart?

A. No, I did not.

Q. Have you ever heard of her?

A. No, I haven't.

Q. Have you ever seen this letter before?

A. No, sir, I haven't.

MR. BEACH: I'd like to note for the record that this document which has been marked as Pennell Exhibit Number 3 --

MR. HOPPER: Plaintiffs' Exhibit Number 3.

MR. BEACH: Well, Plaintiffs', excuse me. Thank you. Plaintiffs' Exhibit Number 3 appears to be incomplete in that it references an enclosure, which is not provided in the copy of the document that has been so marked, as counsel properly corrected.

BY MR. HOPPER:

Q. I refer you over to the second page of the letter, Mr. Pennell, item number 10. Would you

read what item -- paragraph number 10 says in the first sentence before the colon.

Would you read it out loud for the record.

A. (Reading)

When processing the reports, we would like to receive them in the order listed below.

Q. And then it goes on to list, I believe, 13 different items that Ms. Stuart from the RJR marketing research department is interested to obtain; is that correct?

A. It lists 13 items, yes.

Q. And what is the item that she's interested in obtaining information on, referenced in item number 3?

A. Smoking incidence and brand preferences, ages 14 through 17, is listed here.

Q. Would it be your understanding or impression that the letter written by Ms. Stuart to the NFO was devising a format to be used in gathering data and information?

A. It would appear to me that they are agreeing on a screening format that was going to be handled by NFO here.

Q. And back to the first page of this document, the very first sentence following the regards and colon, referencing the April screening, says what?

A. The first point -- the first bullet? I'm sorry.

Q. On the first page --

A. Oh. (Reading)

The following points were discussed yesterday in our meeting.

Q. So, apparently, if you took that at face value, a meeting was held to discuss these various points regarding the screening process; is that true?

A. It would appear there was a meeting on that issue, yes.

Q. Would it still be your belief or understanding, having now looked at this document, that you believe that RJR has never kept or doesn't keep or store any data or information on marketing to persons under the age of 18?

MR. BEACH: Object to the form of the question.

You can answer it.

THE WITNESS: Well I cannot take just this document and assume that -- and given everything I know myself and observed in terms of my own experience, that this necessarily means that has changed. I don't know, for example, whether or not -- since I don't know either of the individuals here, whether or not they might have been individuals who this is what their preference of what we needed to do was done but it never happened. I don't know whether or not there was changes that took place after this memo was sent out. Et cetera.

So, I mean, I can't answer your

question that it changes my mind that we do -- the company did or didn't keep that stuff, because I -- this is somewhat out of context, because I don't know what has happened since then. I don't know whether, in fact, that did happen or not. I put that with my personal experience and it would suggest to me that I have never known anyone to use this type of information at R.J. Reynolds.

MR. HOPPER: Would you mark this one, please.

(PLAINTIFFS' EXHIBIT NUMBER 4 WAS MARKED FOR IDENTIFICATION)

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BY MR. HOPPER:

Q. Mr. Pennell, I'm now showing you another document, which has been marked as Plaintiffs' Exhibit Number 4. Would you take the time to read and review that document.

And we can go off the record during that time.

(WITNESS REVIEWS DOCUMENT OFF RECORD)

BY MR. HOPPER:

Q. Have you had a chance to review the document?

A. Yes.

Q. Can you tell me who it appears that the document is directed to?

MR. HOPPER: Excuse me. Obviously we're back on the record.

THE WITNESS: It -- the document appears to be to a Mr. R. A. Blevins, Jr.

BY MR. HOPPER:

Q. And he was with RJR, wasn't he?

A. Do not know this individual, so ...

Q. And what is the apparent title of this memorandum, under the "RE".

A. "Teenage and Adult Smoking Attitudes."

Q. Would you mind reading the first paragraph for me into the record.

A. (Reading)

This will outline the kind of study we would like to do on a semiannual basis, to obtain consumer attitude towards smoking, particularly as they apply to the health issue.

Q. Would you read the second paragraph.

A. (Reading)

This study, in its periodic nature, will provide us with a tremendously useful insight into public attitudes. And, most importantly, it will put light on the very vital teenage sector of the market. All of this is urgently needed so that we can properly forecast our future requirements and leaf buying, plant facilities, manpower, et cetera.

Q. Would you mind reading the third paragraph

for me into the record?

A. (Reading)

We plan to conduct 1600 interviews. Half of the sample will consist of teenagers, 15 to 20 divided --

Q. Excuse me. No, that's incorrect. It says 12 to 20.

A. I'm sorry. (Reading)

Will consist of teenagers 12 to 20, divided evenly by sex, and the other half will consist of adults. Nonsmokers as well as smokers will be included in this sample.

Q. And then would you mind to read the next to the last paragraph on that same page?

A. Starting with "teenagers"?

Q. Yes, sir.

A. (Reading)

Teenagers would be asked if they had received any advice from any older person about smoking and, if so, what that advice consisted of and when it was last received. They would also be asked what kind of person gave them this advice, whether it be a parent, a teacher, et cetera. Multiple answers would be elicited.

Q. And if you flip over to the next page on this same document, can you tell me who authored this?

A. A T. P. Haller, I believe.

Q. Isn't it true he's with RJR -- or has been with RJR in the past?

A. I do not know that individual.

Q. Okay. And can you tell me who was copied on the document?

A. A Mr. J. L. Clawson.

Q. Isn't it true that Mr. Clawson was also with RJR?

A. I do not know Mr. Clauson.

Q. Okay.

A. This document was written in 1968. And I obviously was not only not with the company, but do not know any of these individuals.

It references some attachments, which are not there, but it also speaks to -- appears to be a -- somebody who was in the forecasting group, suggesting a way they could do a better job of forecasting.

Here again, I have not seen this document, don't know any of the individuals on it, or whether anything came from the request that was listed here.

MR. BEACH: Is this a good place to take a quick break, if you're in between exhibits?

MR. HOPPER: No, it's not a good place to take a break. But I'll try to take one as

soon as I can, though, for you.

Would you mark that, please.

(PLAINTIFFS' EXHIBIT NUMBER 5 WAS MARKED
FOR IDENTIFICATION)

MR. HOPPER: Mr. Pennell, I'm
handing you a document that's been marked as
Plaintiffs' Exhibit Number 5, I believe.

Well go off the record, if you'll
take a moment to review that.

(WITNESS REVIEWS DOCUMENT OFF RECORD)

MR. HOPPER: Back on the record.

//

BY MR. HOPPER:

Q. Mr. Pennell, I direct you to what is actually
the second page of that document, even though it's
not marked. And can you tell me what it appears to
be?

I should ask you, does it appear to be a
memo?

A. Yes.

Q. And who does it appear to be directed to?

A. W. S. Smith, Jr.

Q. And who appears to have authored it?

A. J. H., and I can't read it for the --

Q. Could it be Sharrill, S-H-A-R-R-I-L-L?

A. It could be.

Q. Your legal department put the stamp over it a
little bit there. But it is clear that
Mr. Sharrill, Jr., was from the marketing research
department at RJR, isn't it?

A. That's what it says, yes.

Q. Have you ever seen this report before?

A. No, sir.

Q. During any time that you've been with the
company, do you recall anyone at RJR suggesting
that RJR needed a new youth appeal brand?

A. No, sir.

Q. Are you aware of any time, since you've been
at the company, that RJR kept or fashioned any
statistics showing the loss of market share of --
strike that.

Kept any statistics that showed that
more than 50 percent of men began smoking before
the age of 18?

A. No, sir.

Q. Are you aware of the fact that RJR learned
that the share of teenage smokers declined from
21.3 percent in the spring of 1979 to 19.9 percent
in the fall of 1979?

A. No, sir.

Q. That would have been the year that you joined
the company, correct?

A. That's correct.

Q. Do you remember the month that you joined the
company?

A. June.

Q. You never saw nor were made aware of any of
those market share numbers?

A. No, sir.

Q. Can you tell me, Mr. Pennell, what the
letters forming what appear to be an acronym,
F-U-B-Y-A-S, stands for?

A. In this document?

Q. No, sir.

MR. BEACH: I think he's done with that document.

THE WITNESS: I'm sorry, the letters again?

BY MR. HOPPER:

Q. F-U-B-Y-A-S.

A. First usual brand/younger adult smoker.

Q. Have you heard the phrase "young adult smoker" at RJR before?

A. "Younger adult smoker"?

Q. Yes.

A. Yes, sir.

Q. What does it mean?

A. The phrase "younger adult smoker" at R.J. Reynolds is -- as I know it, is speaking to 18 to 24-year-old adult smokers.

Q. Do you know of any internal memoranda at RJR which refers to marketing or advertising to younger adult smokers?

A. Yeah. I would imagine that there is internal documentation speaking to younger adult smokers by that definition. Yes, sir.

Q. Have you ever used the term to refer to persons under the age of 18?

A. I'm sorry?

Q. Have you ever used that term to refer to persons under the age of 18?

A. I have not.

Q. Have you ever heard it used at RJR before?

A. To refer to smokers under the age of 18?

Q. Yes, sir.

A. No, sir.

Q. What's the importance of the first usual brand/young adult smoker to RJR, in terms of market growth?

A. Are you asking in -- in theory or are you asking as a -- as a number?

Q. I'm asking you as a matter of dollars and cents.

A. I have no idea, in absolute dollars and cents. There's no way I could answer is that.

Q. Isn't it true that that component of the market comprises a significant area of market share and growth for RJR?

A. I believe that I would characterize it as being one of the opportunities, but one of only three. I would characterize it this way: The FUBYAS, as a term, is part of a -- what came out of a theory that was provided by individuals in the marketing research department at some point, the exact timing, I don't recall, that said in addition to -- that there are essentially -- as I characterize it, three ways to increase your buyer base of adult smokers.

The first is, is to maintain your current adult smoker -- the buyer base, so that they don't leave you as their usual brand and go to somebody else.

The second one being to convert or switch competitive adult smokers -- adult smokers currently smoking a competitive brand over to your brand, to be their brand of choice. And the third,

or FUBYAS, theory said there are 18 to 24-year-olds who have not chosen a specific brand as their brand of choice at that point and stage, but have made the decision to smoke, and there is an opportunity among those adult smokers as well.

Q. Referring back to Exhibit Number 5 again, isn't it true that this memorandum references the age group 14 to 17 on that -- what would technically be the third page?

A. Yes, it does.

Q. And isn't this document referred to as Share of Smokers by Age, Top Ten Brand Items?

A. Yes, it is.

Q. So doesn't it appear that the marketing research department of RJR is keeping track of and forming information related to the age bracket 14 to 17?

MR. BEACH: Object to the form of the question.

THE WITNESS: Well, I don't know the history behind this document or what happened as a result of it. I --

BY MR. HOPPER:

Q. But it appears to be that that's the case; isn't that correct?

MR. BEACH: Did you finish your answer?

MR. HOPPER: That's all right. I heard him.

MR. BEACH: You may have heard him, but you couldn't have heard words he didn't finish speaking.

THE WITNESS: It's -- my point is simply it is tough -- you were asking me to assume. And it is tough for me to assume --

//

BY MR. HOPPER:

Q. No, sir, I'm not asking you to assume. And I'm sorry to interrupt; I know your counsel doesn't want me to. But I'm trying to save our time so I can get you out of here.

I'm not asking you to assume anything. I'm asking you to tell me if it appears that RJR is tracking and keeping data on age 14 to 17.

A. Well, I understand -- I'm sorry. I said assumes.

But from an appearance standpoint, you ask if this document and this document was all that there was to go on, it is clearly showing that to be the case.

Q. Well, we've got about three or four documents now that appear to be showing that they're keeping track data on an age group lower than 18. So I ask you again, does FUBYAS at all refer to ages of smokers younger than 18?

MR. BEACH: Object to the form of the question.

THE WITNESS: As I explained earlier, or just a minute ago, FUBYAS, by my definition, is speaking to first usual brand/younger adult smoker, and that speaks to adult smokers 18 to 24.

MR. BEACH: Mr. Hopper, about, now,

20 minutes ago I asked you if we could take a break.

MR. HOPPER: Yes. Yeah, I need to take a break too. Let's take a five-minute break and we'll get back at it.

(RECESS TAKEN FROM 2:26 P.M. TO 2:30 P.M.)

MR. HOPPER: Back on the record.

(PLAINTIFFS' EXHIBIT NUMBER 6 WAS MARKED FOR IDENTIFICATION)

BY MR. HOPPER:

Q. Mr. Pennell, I'm showing you what's now been marked as Plaintiffs' Exhibit Number 6, which is a report entitled Strategic Research Report, authored by Diane S. Burrows, sent to G. H. Long, which I assume is -- is RJR's counsel from Shook, Hardy, Gary Long. Do you know him?

A. I don't know Gary Long.

Q. And quite an extensive copy list. But I'll ask you to take a few minutes. Obviously you don't have the time to sit and read through every word page for page on that. But ...

MR. BEACH: Let me just note for the record that I believe you're under a misimpression as to who G. H. Long is.

MR. HOPPER: It may be. Do you know for a fact who he is?

MR. BEACH: I'm not -- I'm sure, if you have questions about individuals who this was directed to, you know, informally --

MR. HOPPER: I said, on the record, "I assume".

MR. BEACH: Well I don't -- I don't -- to be honest with you, I wouldn't be able to state with a hundred percent certainty for the record, so I don't want to make such a statement.

MR. HOPPER: I'm just glad it's not my name on there. As an attorney. Put it that way.

BY MR. HOPPER:

Q. Mr. Pennell, for the sake of time, if we could move on. What do you think the purpose of this report is all about?

A. Well, I'd like to acknowledge that I haven't even had a chance to look through it.

Q. Have you ever seen it before? Are you familiar with it?

A. No, I haven't.

Q. You've never seen or come across a report by Diane Burrows that is a Strategic Report on Younger Adult Smokers?

A. Well, if you could let me just take a minute to --

Q. Sure.

A. -- at least thumb through it, so I could --

Q. Sure.

(WITNESS REVIEWS DOCUMENT)

THE WITNESS: I've browsed through it, if you're waiting on me.

MR. HOPPER: Okay, okay.

BY MR. HOPPER:

Q. Now that you've had a chance to look at the document, does it jog your memory that you've seen it before?

A. No, I've not seen this -- this document, as it exists here -- I mean, this document that exists here.

Q. You were employed by the company at the time that it appears to be authored, correct?

A. That's correct. And I was a division sales manager in New Orleans, Louisiana, at the time.

Q. And do you know the author Diane Burrows?

A. Yes.

Q. And what did she do for the company?

A. She was in -- at one time, in the marketing research department for the company and, if I'm not mistaken, was a marketing manager in brands for a period of time. But is not with the company today.

Q. I'd asked you earlier, but you requested a little additional time to review, what you think the purpose of the report is, based on what you've read.

A. In just browsing through it, which is all I have done, it appears to be pointing out the perspective that we, as a company, could be doing a better job of having 18 to 24-year-old adult smokers purchase our brands versus competitors.

Q. Following this report, were there specific programs or promotional activities or advertising programs, hence, marketing programs, developed to address the younger adult smoker?

A. And I may have -- I'm unable to really speak to that immediately following, because I was still in field sales. As a matter of fact, I was wrong: I was still an assistant division manager in February of '84.

I do know that the -- part of the theory that comes out of this has been maintained, and that is that we could do a better job and a more effective job of having 18 to 24-year-old smokers, adult smokers, choose our products versus competitors, which tended to be the significant trend.

Q. Do you believe that, following the issuance of Younger Adult Smoking Analysis, that attracting a smoker at the earliest possible opportunity is important?

A. I believe that, for some brands, the opportunity is there to be able to obtain the business of 18 to 24-year-old smokers who have not made -- yet made a decision on which brand to choose. And the opportunity is there for 18 to 24-year-old smokers that have chosen a competitive brand to be able to try to move them over to your products.

Q. Isn't it true that letting brand loyalty take hold in a smoker is one of the most significant things to capturing that smoker for purposes of that particular brand?

MR. BEACH: Object to the form of the question. It's awfully ambiguous.

THE WITNESS: I'm not real sure I'm following your question. I'm sorry.

MR. HOPPER: I'll rephrase.

BY MR. HOPPER:

Q. Isn't it true that the younger that you can attract a smoker to a brand indicates that you will

have brand loyalty for years to come?

MR. BEACH: I'll object -- I'll object to the form of the question again, on the same grounds.

But if you can answer, please go ahead and do so.

THE WITNESS: I'll attempt to do so. Adult -- adult smokers are -- are loyal -- as a general rule, loyal to --

MR. HOPPER: Excuse me.

(J. D. LEE AND DAVID C. LEE NOW PRESENT)

BY MR. HOPPER:

Q. Isn't it true that RJR had statistics collected by its marketing department that showed it that, the earliest opportunity that you could attract a smoker to brand loyalty, you could maintain that loyalty for a longer period of time?

MR. BEACH: Object to the form of the question.

You can answer it. Go ahead.

THE WITNESS: I think there is clearly perspective and theories within the company that would suggest that it is very known that this is a very brand loyal category. But that's nothing unique versus toothpaste or mouthwash or whatever frequently used consumer products category.

But the theory, that if there is an age group of adult smokers 18 to 24 and a group within that adult smoker group that has not yet decided which brand they choose, that if they would choose your brand, then you could hopefully build loyalty with them over time. But switching is very common in this business and happens frequently. And, so, the brand loyalty is not something that is automatic nor can be taken for granted.

MR. HOPPER: Could you go back and read the first part of his answer to me? I'll stop you when I have what I want.

(WHEREUPON, THE ANSWER WAS READ BACK BY THE COURT REPORTER AS FOLLOWS:

ANSWER: I think there is clearly perspective and theories within the company that would suggest that it is very known that this is a very brand loyal category. But that's nothing unique versus toothpaste or mouthwash or whatever ...)

BY MR. HOPPER:

Q. To my knowledge, toothpaste and mouthwash don't have anything in them that are addictive, do they?

MR. BEACH: Object to the form of the question.

BY MR. HOPPER:

Q. That you know of?

A. I'm sorry?

Q. To my knowledge, toothpaste or mouthwash don't have anything in them that are addictive, that you know of, do they?

MR. BEACH: Object to the form of the question.

If you want to answer it, you can.

THE WITNESS: Well, you're asking me to speculate on what toothpaste and mouthwash --

MR. HOPPER: That's fine. You can speculate. I'm just asking you if you know.

THE WITNESS: And in my opinion, I do not believe that -- or do not know whether toothpaste or mouthwash have anything addictive in them.

BY MR. HOPPER:

Q. Okay. Were you responsible, in your capacity as brand manager for Camel, when you moved over into marketing, I believe, in 1985 -- I think you were assistant brand manager at that point, you told me?

A. That's correct.

Q. Were you responsible for monitoring Camel performance and sales growth, following Camel's new advertising campaign?

A. Well, when I moved over as an assistant brand manager in 1985, we didn't have a new Camel advertising campaign. We were still running the same one we had been for a while.

Q. Exactly. And then you went through a complete repositioning, true?

A. The repositioning began or took place, in terms of us changing campaigns for the brand, sometime in 1997 -- or 1987 or early 1988.

Q. Isn't it true it started in late '86, that -- the planning process on it, before you actually rolled out the ads in '87?

A. I was not -- no. I can say that we had not started repositioning the Camel brand during my time on it, no, sir.

Q. Well, I'd like to show you a document, Mr. Pennell.

MR. HOPPER: Let me mark this as Plaintiffs' Exhibit Number 7, please.

(PLAINTIFFS' EXHIBIT NUMBER 7 WAS MARKED FOR IDENTIFICATION)

BY MR. HOPPER:

Q. Mr. Pennell, I'm about to show you what has now been marked as Plaintiffs' Exhibit Number 7 for the record. I'd like you to take just a moment or so to look at this.

And we'll go off the record while he's doing so.

(WITNESS REVIEWS DOCUMENT OFF RECORD)

BY MR. HOPPER:

Q. Have you had a chance to look at it, Mr. Pennell?

If there's something else you don't understand, we can direct you back to it. I'd like to keep moving, for your sake, if not for mine.

A. Just one more second.

Q. All right.

(BRIEF PAUSE)

Can you -- can you tell me what the date is on this document?

A. March 12th, 1986.

Q. And can you tell me what the "RE" colon claims this extensive memorandum to be?

A. The Camel New Advertising Campaign

Development.

Q. Going back to my earlier question, where I asked you, isn't it true that the campaign developed long before 1987, wouldn't it appear to be that this campaign was already well under development in the marketing department?

A. I would say that the attempt to re -- figure out how to reposition the brand was well under development at that point.

Q. And it was later in '87 when it actually -- and early '88, as you've testified to, that it was actually rolled out into the marketplace, correct?

A. That's correct. It was well into this exploratory, this campaign development process, that it is talking about, before that opportunity or a way to reposition the brand chosen was utilized.

Q. I'm going to read to you from paragraph number 1 where it speaks to the target audience. The last sentence, which says: (Reading)

However, recognizing the volume potential associated with advertising, which is broad-based in appeal, the creative exploratory will emphasize approaches which employ universal cues and symbols have motivation value outside of the prime prospect group as well.

What do you think that means, Mr. Pennell?

A. What I think that means is, is that, even though we -- they are looking to better position the Camel brand among adult smokers 18 to 24, that it is imperative that we not focus the efforts against just that group, and that it have mass -- be a mass appeal opportunity in the marketplace.

Q. Isn't it necessarily true that, as you have continued to state over and over and over again for the record, of the 18 to 24 age group, that this new campaign is going to extend, not only in the direction of older smokers, but necessarily also in the direction of those smokers younger than age 18?

A. I don't believe that I have indicated that at all.

Q. I'm asking you a question, though. Isn't it necessarily true, logically, that if it's going to go one direction, it's also going to go the other?

A. We do not market our products to --

Q. I didn't ask you if you marketed it. I said don't you think logically, based on what you just said, that if this thing is going to go outside the prime prospect group one direction, that logically it follows it's also going to go the other direction? Wouldn't that seem to be the logic here?

A. I don't believe that's what that's saying here.

Q. Okay. Well, let me ask you this --

A. What I believe that's saying here is --

MR. BEACH: Please let him finish his answer to your questions. You're shooting them

rapid fire, and you're entitled to do that, but you've got to give him a chance to answer.

MR. HOPPER: He said, "I don't believe that it does."

MR. BEACH: And he was in the middle of a word when you cut back in.

MR. HOPPER: Okay. That's fine.

THE WITNESS: Can I continue?

What I had responded that this is saying is, is that we should not -- that they should not be developing something in this exploratory that is focused only to be relevant to that age group.

BY MR. HOPPER:

Q. That's true.

A. That it should have more mass appeal on a global basis, because of the importance, as it says here, of having the older smoker group find this relevant and appealing as well.

Q. I understand that, just as clear as a bell. And I'm saying to you, isn't it true that the very logic that you are employing there, that extends these universal cues and symbols in the direction of the older smokers is going to logically necessarily extend it in the direction of those younger than the prime prospect group?

A. No. I don't believe that that has to happen at all.

Q. Based on the fact that we've now laid I don't know how many documents here emanating from the marketing research department over a period of years at RJR, where you clearly keep data on the age group of age 14 to 17, that something like a Joe Camel type ad campaign, to catch up on market share against Marlboro, is logically going to exceed and go outside that. If I'm not younger than 18 or if I'm 17 years old and 364 days old before I turn 18 the next day, and I'm at the race and I see these symbols and I see all that, isn't it going to necessarily reach me?

MR. BEACH: Object to the form of the speech and the question.

THE WITNESS: Well you've just thrown a lot out there that I'd like to respond to. Number one, I want to reference that every one of these documents -- or the vast majority of them are prior to my even being with the company. And those that are, certainly are speaking to when I was not even in the marketing department.

The one that I am -- have still not even read but most familiar with what the outcome is, and the one that I have read, all reference only adult smokers in terms of any tracking or any opportunity.

I would also like to point out that I believe that it is possible for you to appeal to an 18-plus universe and not a younger than that universe. But it is impossible for me to respond to do we or don't we appeal to that group, because we don't track them in terms of their overall appeal or their response to any of our programs, because they are not adult smokers, by our definition.

There have been and I could, you know, use this exploratory process that is being referred to in this note to Mr. Iauco, from Mr. Caufield where in that process there were examples of things that were developed, exposed to consumers, and were appealing more to the 18 to 20-year-old group than they were to the 21 to 24-year-old group, or certainly the 25 to 34-year-old group, that were deemed to be skewed too young in terms of their overall appeal and, therefore, were discontinued and not run.

So I want to repeat that I do believe that it is possible to say we want to make -- do a better job among the 18 to 24-year-old adult smokers, as referenced in this memo, but ensure that we are also relevant and appeal to a broader older group of smokers as well.

BY MR. HOPPER:

Q. That's just as clear as a bell to me that that's what you've said and testified to on the record. And I'm telling you -- or asking you, excuse me, that if you repositioned Camel the way you did, and you put old Joe Camel out there the way you did, and you have clearly stated in the plan for the advertising campaign that it's going to exceed the prime prospect group, that it necessarily is logical that it's also going to reach those younger than 18. The logic stands clear to evidence that, don't you agree?

A. I can't -- I can't --

Q. It's illogical to you that that would be the case?

A. I don't believe that happens to be that way. I can't tell you whether it does --

Q. Why is it that it's going to reach --

A. Can I finish?

Q. Uh-huh.

A. I can't tell you whether it does or it doesn't, because I have never seen any data to track that information as well.

Q. Oh, but, Mr. Pennell, you have. You know the campaign worked. You know it worked. You know your market share increased. You were in the marketing research department and you've testified to the fact that you oversaw the repositioning, and it worked. Your market share shot up, did it not?

A. I was not in the marketing research department. And what I testified to was, is that I was involved, after the repositioning, to sustain the repositioning of the brand moving forward.

Q. Okay.

A. But if I could finish my -- my statement: We do not have -- have not tracked that against anybody other than 18 to 24 -- or 18 -- smokers 18 years of age or older and, therefore, have no knowledge relative, because it is not the universe that we recognize as being who we are marketing our products against.

Q. On page --

A. So, I just thought I might also add that the Federal Trade Commission challenged that very issue, relative to what our expectations were, and in 1994 found that, not only did the Joe Camel

advertising not cause underaged people to smoke,
nor did it cause underaged people to smoke
any more.

Q. Have you ever been interviewed by the FTC?

A. No, I have not.

Q. Have you ever given a statement to the FTC?

A. No, I have not.

Q. Have you ever been interviewed by the FBI?

A. No, I have not.

Q. Have you ever given a statement to the FBI?

A. No, I haven't.

Q. Have any of the people in the marketing
department of RJR ever been interviewed by the FBI?

A. I can't speak -- I don't know.

Q. Have you ever known the FBI to interview
anybody at all from RJR?

A. Not that I'm aware of.

Q. What about the FTC?

A. I would -- I believe that folks from
R.J. Reynolds have been interviewed by the FTC.

Q. On page 2 of this same document, Plaintiffs'
Exhibit Number 7, in the last sentence, paragraph
4, it states: (Reading)

Additionally, the
exploratory will cover
approaches which employ
universal cues and symbols
that effectively communicate
the strategies with
motivational value that
transcends demographics.

What do you think that means?

A. I think what that's saying is, is that we
want to effectively communicate across all adult
smoker groups.

Q. Well, now you've collected all these
demographics, including age 14 to 17. Isn't it
logically necessarily true, that if it's going to
exceed your so-called arbitrary lines of age 18 on
the young side and age 24 on the high side, if it's
going to reach the 35-plus or the 54-plus or
whatever, that it will also transcend the
demographics in the other direction?

A. What I am telling you is, is that this
document only refers to 18-plus. And I can also
tell you that, when I read something that says
"transcends demographics," that it means a universe
of 18-plus adult smokers.

Q. Do you believe that Camel showed sustained
growth among the young adult smokers in 1988? Or
do you think this was just a blip?

A. I'm sorry. Could you re --

Q. Do you believe that Camel did show sustained
growth among the YAS in 1988, or was this just a
blip? An aberration, to be more accurate and less
slang about it.

A. As best as I can remember, going back to
1988, I believe that there was progress seen in
Camel's share of the 18 to 24-year-old adult smoker
age group.

Q. I'm not clear. Will you state that once for
me, please.

A. As best I can remember, there was growth

shown, during the time period you've just referenced of 1988, among 18 to 24-year-old adult smokers.

MR. HOPPER: Excuse me one -- one moment.

BY MR. HOPPER:

Q. Can you flip over to the back page of Plaintiffs' Exhibit Number 7, I believe it is.

Isn't it true that on the last page there, page number 5, that you're copied on this very memo that we've been referring to as Plaintiffs' Exhibit Number 7?

A. Yes, it is.

Q. Do you recall receiving this memorandum?

A. I don't recall receiving this exact memorandum, but I do remember the exercise of beginning this exploratory.

Q. Did you run any focus groups relative to this new ad campaign?

A. Yes, there were.

Q. Did you run any focus groups particularly focusing on the 18 to 24-year-old age group?

A. We would have run focus groups among the 18 to 24-old (sic) age group, yes.

Q. Did you use any of that NFO data that I referred to earlier?

A. I'm not familiar with the NFO data, as I testified earlier.

MR. HOPPER: If you'd mark that for me, please.

(PLAINTIFFS' EXHIBIT NUMBER 8 WAS MARKED FOR IDENTIFICATION)

MR. HOPPER: Why don't you take a few minutes and look at this and, I believe, refresh your memory.

We'll go off the record while the witness is doing that.

(WITNESS REVIEWS DOCUMENT OFF RECORD)

BY MR. HOPPER:

Q. Mr. Pennell, can you identify the document that's been placed in front of you to review as Plaintiffs' Exhibit Number 8.

A. Yes. It appears to be a document written by me to a Mr. R. M. Sanders.

Q. Who's Mr. Sanders?

A. Mr. Sanders, at that time, was the person I reported to. I believe he was vice president of --

Q. Brand marketing?

A. Or one of the vice presidents of brand marketing.

Q. And what's the so-called title of the memo, the RE?

A. Camel Performance and Opportunities.

Q. And what's the date of the memo?

A. February 9, 1989.

Q. What do you think you're trying to tell Mr. Sanders here in this memo?

A. It would appear that the message that I am sending to him is, is that we are making progress relative to our performance among adult smokers, 18 to 34. And that, in my mind, it is important that we continue to -- continue that effort on.

Q. Isn't it true that, while, yes, you can

characterize it as making performance, you state in the first bullet point paragraph, on page 1, that parenthetically, six months rolling average, in parentheses, is the highest level ever at 7.0, making it the third largest YMS - and you'll have to tell me what that means -- brand on the market?

A. Yes, that -- that statement is there.

Q. So you had significant growth effect as a result of the campaign, didn't you?

A. At that point there was a significant amount of progress or progress had been made against younger adult male smokers.

Q. And you might even say it was remarkable, from an historical standpoint, as you paint this or describe it there, correct? Remarkable growth?

A. I don't know that I would characterize it as "remarkable". It was strong growth, as -- as voiced here.

Q. Well "highest level ever". That's -- that's remarkable.

MR. BEACH: Objection to the form.

Asked and answered.

BY MR. HOPPER:

Q. Were you credited in any way personally for your role in the repositioning of Camel and the emergence of Joe Camel in the brand marketing of Camel cigarettes?

A. What do you mean, "credited"?

Q. Did you receive any notoriety as a result of it, within the company, from the officers?

A. I don't know that I received any notoriety. I think that it was, my performance on Camel, as was the whole team's, appreciated. And then they voiced that.

Q. How did they voice it?

A. Well, I mean, in -- as best as I can recall, by, you know, providing positive feedback to the job that was being done.

Q. Were any of your promotions tied to the remarkable growth performance of Camel and the repositioning?

A. I'm not the one to answer that, but I don't believe that they would have been, no, sir.

Q. Have any of the other members of that Camel team become senior vice presidents of RJR?

A. Senior vice presidents of RJR?

Q. Since that time.

A. That were involved in Camel's repositioning?

Q. Yes, sir.

A. Yes.

Q. Who would that be?

A. Lynn Beasley.

Q. And what was her job? She's still with the company, isn't she?

A. She is. She was the brand manager on Camel prior to my coming onto the brand in '88. And she is -- had the Camel brand report through her for the past, I don't know, maybe -- couple of years, anyway. I can't recall exactly.

(PLAINTIFFS' EXHIBIT NUMBER 9 WAS MARKED FOR IDENTIFICATION)

MR. HOPPER: Mr. Pennell, I'm showing you what has now been marked as Plaintiffs'

Exhibit Number 9. If you would, take a moment and look at that.

And we can go off the record while you're doing so.

(WITNESS REVIEWS DOCUMENT OFF RECORD)

MR. HOPPER: If you need more time to look at it, I'll let you come back to it.

BY MR. HOPPER:

Q. Referring to Plaintiffs' Exhibit Number 9, I direct you to the first page. At the bottom there's a chart there that shows "Age Started Smoking". Do you see that?

A. Yes. The median age?

Q. Yes.

A. Yes.

Q. Can you tell me, by looking at that chart, what's the highest incident percentage-wise of age of people starting to smoke?

A. If I'm looking at this correctly, it would say that 17 and under is 54 percent for men and 33 percent for women.

Q. And this appears to be a document from Mr. F. H. Christopher, Jr., from RJR, doesn't it? On the front page?

A. It appears to be to that individual, from --

Q. Excuse me, yes.

A. A D. W. Tredennick --

Q. Tredennick?

A. Tredennick.

Q. That's right.

A. -- in the marketing research department --

Q. Of RJR.

And the purpose of the memorandum, as it states, is to answer the question: What causes smokers to select their first brand of cigarette? That's what Mr. Tredennick says in the first sentence there, doesn't it?

A. That's correct.

Q. If you look over to page 2 of this same document, in the bottom paragraph there, titled Conformance, it states -- and if you would, read that first sentence, please.

A. "Probably"?

Q. Uh-huh.

A. Uh --

Q. I think it says "probably the most".

A. "Probably the most" -- I can't read it, but:
(Reading)

Probably the most
prevalent reason that a young
person starts to smoke is the
influence of a close friend
or peers.

Q. Isn't it true that all the data that you've seen in the 14 to 17 age category substantiates the fact that the peer pressure out there is what causes young smokers to smoke?

MR. BEACH: Object to the form of the question.

MR. HOPPER: You can. What's your answer?

THE WITNESS: Well I don't know that all the data that I've shown boils down to

that specific answer, no. We're talking about a bunch of data that I have not seen before, that I am seeing for the first time, that relates to underage smoking, that I am not familiar with.

//

BY MR. HOPPER:

Q. Well, going back to your memo to -- which is Plaintiffs' Exhibit Number 8, wouldn't it appear, based on that data, that that's the reason why the highest level ever numbers were achieved in repositioning the Camel brand?

A. I don't know that I can make the correlation to your question that --

Q. Wouldn't it appear to you, though, that that's the case?

A. It wouldn't -- there is no implication to me at all that would say that peer pressure is -- is the driving motivator, as you put it, based on the performance of the Camel brand.

Q. And you don't think that the repositioning of Camel and the Joe Camel cartoon character had anything to do with driving up the incidence of smoking of the younger than 18 age group?

MR. BEACH: Objection --

THE WITNESS: I have no --

MR. BEACH: Excuse me. Objection to the form of the question. You can answer it, if you can.

THE WITNESS: I have -- I do not have any learning on what -- that was done by RJR or any other source that I have been privy to, that would tell me what has happened with -- as a result of the Joe Camel advertising campaign among underaged smokers, because we don't track that information, because it is not part of our prime prospect and universe of smokers that we recognize.

BY MR. HOPPER:

Q. Ah, but you do, Mr. Pennell. Because I've already placed before you a number of documents in the 1970's that show clearly that your research department tracked it, lead up to the work of Diane Burroughs in the '80s, which resulted in the Joe Camel campaign in 1985 and '86, that was rolled out in '87. And the numbers show, and the statistics are obvious, that you reached that younger age group. Isn't that true?

MR. BEACH: I object to the form of the question. Before you respond to that, Cliff, let me just make an observation.

MR. HOPPER: Well, no, you have no -- sir, you have a right to get your objection on the record. You don't have a right to start making observations. If you have an evidentiary objection based on the Rules of Evidence, you have a right to enter that. So if you want to enter it, you can.

MR. BEACH: It's entered.

MR. HOPPER: Okay, thank you.

THE WITNESS: There is nothing I would -- I would like to respond. There is nothing laying on this table that I have seen today that would indicate that we have utilized -- that any information was utilized relative to underaged

smokers since the repositioning of the Camel brand.

It is not part of how we conduct our business or do our business, and I think it is unfair to cite documents from 1970 and back as an indication of -- even if they are put in the proper context, of how business is done today.

BY MR. HOPPER:

Q. On page 2 of Plaintiffs' Exhibit Number 8, I believe, you state in the one, two, three, fourth -- excuse me, the third bullet point down -- would you read that second sentence for me, please. Beginning with the word "both".

A. (Reading)

Both the 75th Birthday
and Smooth Character
campaigns have been confirmed
as being extremely impactful
advertising among target
smokers.

Q. Okay. And we talked about earlier -- I asked you questions about target marketing. Which target are you referring to there?

A. I think the target that would be referred to here would be 18 to 34-year-old smoker -- adult smokers.

Q. Is it possible that that target exceeded the prime prospect group, as was referenced in the earlier memo, and reached smokers earlier than 18?

A. I have no way of knowing that.

Q. Is it possible?

A. I have no way of knowing that.

Q. Is it possible?

MR. BEACH: He's answered your question.

THE WITNESS: I'll revert back to a previous answer I gave you.

There's no way that I know that; I can't answer the question. But the FTC's whole argument was based on that contention, and dropped.

BY MR. HOPPER:

Q. Would you agree, that at least through 1988, that the focus of the efforts, in part, of the market research department was to make Camel a first choice brand among younger adult smokers?

A. I would agree that, in 1988, 18 to 24-year-old first usual brand younger adult smokers was one of the strategies to successfully reposition Camel, yes.

Q. Would you agree, that based on the market research data that you referred to in your own memo, that you and your department were successful in making Camel a first choice brand among younger adult smokers?

A. I believe it would be clear that progress was made, that seven percent out of a universe of a hundred percent were now -- of adult smoke -- young adult smokers were now choosing Camel.

Q. Has it ever come to your attention that at some time in the '50s there was publicity concerning potential health hazards related to the use of cigarettes?

A. I'm sorry. Could you --

Q. Has it ever come to your attention that at

some time in the 1950s there was publicity concerning the potential health hazards related to the use of cigarettes?

A. If -- if your question is, am I aware at all that the questions of whether or not there are risks associated with smoking started as back -- far back as the 1950s, the answer to that is yes, I am aware of that.

Q. Was it ever discussed in the marketing department at RJR of the potential health hazards and risks associated with smoking, as you formulated your marketing strategies?

A. No, I don't believe it was, from on a -- on a marketing department basis, no.

Q. As senior vice president of marketing and sales operations, is anyone under your line authority or in the marketing department responsible for monitoring the status of any of the claims pertaining to the health hazards and risks of smoking?

A. Monitoring the status -- would you say that again?

Q. Of the health hazards and the risks of smoking.

A. No, sir.

Q. Do the considerations concerning health ever come up in your discussions and interface with advertising, before you roll out an advertising campaign?

MR. BEACH: Do you understand that question? Object to the form of the question on the grounds that it's ambiguous. If you can answer it, go ahead and answer it.

THE WITNESS: I really don't understand your question. I'm sorry.

BY MR. HOPPER:

Q. As you formulate your marketing strategies and then roll those out into an advertising campaign, do the health hazards ever come into play and into discussion in that process, the risks of smoking?

THE WITNESS: I would -- I would have to say, I don't know how to answer that question, because there is -- it is -- it is commonly accepted and believed that there is health risks associated with smoking, both by me and, I think, by our company, and by the people within our company.

The advertising that we go forward with for approval and through our review process is not about whether there are risks with smoking or not risks with smoking. That is very effectively covered, in terms of consumers understanding that, because on every pack and every piece of advertising has to be included the surgeon general warning statements on each and every one. So we don't have those discussions, basis of health risks or not health risks.

Q. Do you smoke, Mr. Pennell?

A. Yes, I do.

Q. Presently?

A. Presently.

Q. How long have you smoked?

A. I've smoked since I was 18 years old.

Q. What -- what brand do you smoke?

A. Vantage.

Q. Why do you smoke Vantage?

A. I smoke Vantage because it's the first brand I ever smoked and I have stayed with it.

Q. Do you think nicotine's addictive?

A. There are an awful lot of definitions of addiction floating around here.

By my definition of addiction, which is a physiological dependence on it, no, I do not believe it is, in the way cocaine or heroine are.

Q. Do you think, from your standpoint of your definition, physiologically that it's neurochemically addictive?

A. I'm not a doctor or scientist. I just know, when compared to cocaine or heroine, I do not see cigarette smoking in that same classification. I see it much more as similar to caffeine or what have you, from a personal observation.

Q. Is caffeine a chemical?

A. I don't know.

Q. Does it -- does caffeine have, to your knowledge, any neurochemical effect on the brain?

A. I don't know.

Q. Have you ever read anything about that?

A. No, I haven't.

Q. Ever? Not in Newsweek or anything --

A. Oh, have I read anything about --

Q. Caffeine? How it affects you?

A. Not -- no, I'm not a doctor or scientist.

Q. Well, you don't have to be a doctor or scientist to pick up Newsweek, do you?

A. I'm not -- not familiar with what it does or doesn't.

Q. Have you ever read anything at all about what nicotine does to the neurochemistry of the brain?

MR. BEACH: Object to the form of the question.

THE WITNESS: No.

//

BY MR. HOPPER:

Q. Do you think that cigarette smoking causes lung disease?

A. I believe that there are health risks associated with cigarette smoking. But I honestly don't know whether it causes lung disease.

Q. Do you believe it does, based on what you've seen or heard or read?

A. I honestly don't know. I just told you, I believe there are health risks associated with it. I believe it's an adult decision.

Q. Have you heard about people who die of cancer and the doctors have claimed that they have died of cancer due to smoking?

A. I am aware of that, yes.

Q. You are aware of that?

So you believe it causes cancer?

A. I just finished telling you, I don't know whether it does or it doesn't.

Q. You mean you think it's -- you're unsure?

A. I don't know. It's not a matter of being sure or unsure, it is I don't know.

MR. HOPPER: Give me just a few minutes to confer with counsel and we'll see where we are. Twenty-five to 4:00. Not too bad.

MR. BEACH: Very good.

(RECESS TAKEN FROM 3:35 P.M. TO 3:38 P.M.)

MR. HOPPER: Back on the record.

I'd express to the witness that, at this point, I have no further questions. And I will allow my co-counsel, Mr. Gottlieb, to intervene at this point and ask any questions he may have. Unless I have some creative burst or something between now and the end, I'm finished with my portion.

I did want to be sure to enter into the record that we do, once again, reserve the right to recall Mr. Pennell at a later time, once we've reviewed the substantial number of documents that have been recently forwarded to us by the legal department at RJR.

MR. BEACH: And before you begin, just let me make an observation. I have had a conversation with my co-counsel about that subsequent production and --

MR. HOPPER: Mr. Belasic?

MR. BEACH: With Mr. Belasic.

MR. HOPPER: Over the lunch hour or something?

MR. BEACH: That's correct. About the nature of the understanding with respect to those documents, that those are class documents that were not produced into the Minnesota depository, were under circumstances that I'm not personally aware of, and that this deposition went forward on the expectation that it was unlikely that any of those documents would pertain to this witness or to other witnesses that are going in advance of your review of those documents. And further, that there would be a showing of -- of a reasonable connection between a specific document and the witness, you know, before a re-deposition will take place.

MR. HOPPER: I think we both have our entries on the record and we'll -- I'll defer to my co-counsel, Mr. Larocca and Ms. Nast and Mr. Sheller to hold that argument with your co-counsel, Mr. Belasic, at a later time, should we choose to continue this deposition.

But we will -- we will reserve our right on this record with respect to any adjournment at this point.

MR. BEACH: No, I understand. But I believe that you have preserved that. I don't believe that there's an argument, I believe there's an agreement.

EXAMINATION

BY MR. GOTTLIEB:

Q. My name is Mr. Gottlieb. I am appearing on behalf of the New York class in the case of Hoskins versus RJR. And the first thing I want to state for the record is I also -- I'm here to move things along so you don't have to be called back a second day, but if those documents that co-counsel was just referring to prove to be relevant to your

deposition, I also reserve the right to appear and take your deposition again on those documents.

Let me ask you a question regarding repositioning, let's say, of Camel. When you wanted to reposition Camel -- and by "you," I mean the company -- to your knowledge, was the formula for Camel changed in any way?

A. The product formula?

Q. Yes.

A. During -- I'm sorry, during what period of time?

Q. Well, let's say 1985 to the present.

A. Well, it's best -- I mean, I'm clearly not going to be able to talk about how many changes or what the significance of those changes were. But as a general practice, when you have a product that is not fully meeting, you know, or accepted by adult consumers -- smokers, then there are adjustments that are made.

I do not believe that I can recall, during the time that I was brand manager on Camel, that we made any change or substantive change to the product on all of the styles. I believe there were some styles that we did make product changes to because the blend may vary from kings to 100s or non-filters to filters, et cetera.

Q. Do you know of any change in the formula which would have affected the market share for your target market for Camel?

A. I can't speak to whether or not, during that '85 to current period, at which point formula changes were made to the Camel product, because I'm just not familiar with when those were done.

Q. Was there any period of time in which you can say that no change was made or no significant change was made to the formula to Camel?

MR. BEACH: Are we talking about 1985 to present?

MR. GOTTLIEB: Maybe he knows from 1985 to 1990, if he doesn't know the entire period. Tell me what you know.

MR. BEACH: I was just trying to clarify that.

THE WITNESS: I am not aware what, if any, changes were made to the Camel formula prior to me coming over as the brand manager on it in April of 1988. To the best of my recollection, and that's all it literally is, during the period of the latter part of 1988 through the first part of 1989, anyway, there were probably -- not that I could recall -- any significant changes in formula for the Camel product.

BY MR. GOTTLIEB:

Q. Are you aware of any instance in which somebody at RJR -- I don't know from what department, but somebody comes and says to you, in marketing, "If we make this change in the formula, we can attract more people from a certain target group"?

A. I have -- I have never had that conversation with anybody, be it from -- from whatever department, saying, if we did this, we would get more of this group or what have you, no, sir.

Q. Have you ever seen any memo to that effect?

A. I would have to acknowledge that there was a memo dating back some time, that was -- was put on the table here today, that would seem to be from somebody in the non-brand marketing group that was suggesting something about, you know, buying leaf or what have you. But I am not aware of -- of any such document, and certainly have not had anybody approach me about, if you change this blend, you can reach this certain group.

MR. HOPPER: I'm going to enter an objection on that as a mischaracterization of prior testimony, because Mr. Pennell has already testified that he didn't know these people and so he doesn't know whether they were in the brand marketing group or not.

MR. BEACH: His testimony speaks for itself.

THE WITNESS: I'm sorry, there was a reference in there to this person being in forecasting and what have you, and that's what I thought I referenced, referring back to.

BY MR. GOTTLIEB:

Q. Is it fair to say that, to your knowledge, there is nothing that RJR does in terms of changing the formula to target any specific group of smokers, or to reposition a brand to target a specific group of smokers?

MR. BEACH: Object to the form.

THE WITNESS: If you talk to -- I'll try to answer the question this way. If you talk to -- if you've got a universe of adult smokers 18-plus, and you talk to various breaks of that, demographically or otherwise, and ask them what it is that they prefer about their product, have them rate various different products in terms of how they like them, et cetera, it is not uncommon to get differences between certain groups.

There is a group of consumers who want ultralow tar products in the marketplace, all right? Their expectations of how that product performs for them in terms of taste, overall performance, et cetera, is very different from another group of smokers who says, "I want a robust full flavor, full tasting cigarette," in terms of it. So --

BY MR. GOTTLIEB:

Q. That's a different target area entirely -- no, no. As far as you know, Winston hasn't been changed to reposition Winston brand and go after another target group; is that correct?

A. I'm sorry, I'm not following that.

Q. Well, I understand that you may formulate a cigarette to go after a particular target group, such as a target group that is interested in ultralow tar and nicotine. You may say: Hey, that's a group that we haven't gone after; we'll create a cigarette for them. Is that correct? That's something that RJR might have done?

A. Providing products that meet an evolving and changing consumer wants in the marketplace is clearly something we have attempted to do.

Q. So you have identified certain needs and

you've created products that would hope to satisfy those needs or desires; is that correct?

A. Meeting unmet consumer wants, yes, is an opportunity in the marketplace.

Q. But when you're repositioning a brand, I'm asking, not creating a new one, do you change the formula to go after a different target group?

A. Obviously, I'm not --

Q. As far as you know.

A. I'm not doing an effective job in answering your question. My response is it depends on whether or not there is a need to change your product. If your product is not meeting the wants of the consumer you are after, the adult consumer you are after, then it's going to be extremely difficult to be effective against them, in my opinion, without an effective product. Because it is, after all, the primary reason that consumer -- adult consumers choose to smoke is for the taste and the enjoyment of that experience.

Q. Well, can you give me an example of a single cigarette that was reformulated in order to reposition and go after a certain target group?

A. Could you give me your definition, then, of reformulated? Perhaps I'm --

Q. Change the ingredients.

A. Change the blend.

Q. Right.

A. Yeah, I can give you --

Q. Put in a special sauce?

A. I'll give you an example. A brand called Doral. That was repositioned in the marketplace some two and a half years ago, I guess, and it was -- at this time it was repositioned, we changed the blend and formula, as you call it, but the blend of that product to be a higher quality product than what it was. Because it was our belief that, in order to meet the group of consumers that we were interested in, adult consumers, that that was a necessary adjustment to make, and we did.

Q. What do you mean by a higher quality? I mean, I don't know about cigarettes. Explain to me. What's a low quality or a medium quality compared to a higher quality cigarette?

A. Well, there are three parts that can go into blends. There can be the main lamina or leaf, there can be reconstituted sheet, or there can be expanded tobacco, all right, are the three kind of common elements found in cigarettes. And the level of quality of tobaccos, where they came from, you know, whether they were domestic tobaccos, overseas tobaccos, or what have you, can have an impact, as can the amount of lamina versus reconstituted sheet versus expanded tobacco.

Q. Is reconstituted less expensive?

A. Than?

Q. Than lamina?

A. Than some laminas; I would -- I would feel certain it is, yes.

Q. And "expanded tobacco," what is that?

A. It's -- it's just that. It is tobacco that goes through a process to expand it.

Q. Volume?

A. Volumetrically, yes.

Q. So you're basically getting less tobacco in the cigarette?

A. In the same amount of space. That is correct.

Q. Are you aware of considerations of nicotine levels in relation to different target groups?

A. I'm not following you, no, sir.

Q. Well, are there certain nicotine levels that you would -- in marketing, would consider to be an appropriate nicotine level for an 18 to 24 age market group?

A. I have never approached or talked about, in any of my experience in marketing, any opportunity that way, no, sir.

Q. Have you ever heard of, either orally or seen a memo, changing nicotine levels in any of the cigarettes that you sell?

A. Where we have changed the nicotine levels?

Q. Have you seen reports saying let's raise the nicotine level or let's lower the nicotine level of any particular brand?

A. It certainly doesn't come to my mind that we -- that I have seen any memo that talks about we will make a conscientious decision to change the nicotine level of this or change the nicotine level of that.

Q. Do you know of any instances in which nicotine levels have been changed over the course of time in any particular brand, be it Winston, be it Salem, be it Doral?

A. I know that over time, tar and nicotine levels in our products have come down. I know that -- you know, we put out line extensions, obviously, or new brand entries of lower tar. But in terms of specifically saying I'm going to make a tar or nicotine change or adjustment to this brand --

Q. I'm not talking about putting in a new brand. I'm saying let's take the Winston, and do you know of any instance where someone went out and said, from now on, the Winston is going to have a lower or a higher nicotine level?

A. No. In terms of -- of making a conscientious decision to do that?

Q. Uh-huh.

A. No, sir. Not that I can recall.

Q. Seeing how we can, I think, agree that changing the formula for cigarettes is not the way in which RJR repositions a cigarette in the marketplace, would you agree that advertising and promotion is the way in which it repositions its cigarette in the marketplace?

A. I wouldn't agree with that statement at all.

Q. Okay. Would you rephrase it?

A. I believe, as I have said earlier, that there -- there are two aspects of effectively position -- repositioning or positioning a brand. And one of them is the emotional side and one of them is the rational side. And the rational side says you've got to have a product that is consistent with my expectations of what a product

will be like. And if you don't have one of those and try to just be effective from an emotional standpoint, I think that's a pretty tough hill to climb.

If you have a product that is within the -- you know, the acceptance range for that group of adult smokers, then what becomes vitally important and operative is then the emotional side, which generally comes through advertising and promotion.

Q. But as far as you know, for example, Camel cigarette, which has been most radically repositioned -- is that correct, in the last, I don't know, ten years of RJR?

A. I would say it is our biggest repositioning effort, yes.

Q. And that was not done through changing the formula for Camel to any significant extent; is that correct?

A. Well, what I said was, is that I'm not aware or don't recall us having done that during my period on it.

Q. To your knowledge.

A. But prior to that, there may have been. And I know that there have been changes since then.

Q. All of my questions are to your knowledge. You can use that as a given.

Would you agree, then, that the major factor in the change of the -- of the target market and who the smokers are of Camel is due to advertising and promotion, rather than reformulating the product?

A. I think that's a correct assessment, during the period that I was on the brand, yes.

Q. Okay. And in general, the idea was to bring it to a younger market; is that correct?

MR. BEACH: Object to the form of the question.

BY MR. GOTTLIEB:

Q. To reposition Camel to attract a younger consumer.

A. I think it is -- it is clearly indicated as being a part of the equation that had not been previously delivered upon, in terms of showing improvement among 18 to 24-year-old adult smokers. But not the only part of the equation.

As was stated by me before, and certainly expressed in some of the documents that we looked at, there has to be a broader appeal for the product among that total adult smoker base, in order to be fully effective.

Q. As I understand your position and RJR's position, your position is that you only are marketing to people who are 18 years and older; is that correct?

MR. BEACH: Objection to the form of the question. Go ahead and answer it.

THE WITNESS: The universe that we recognize and choose to go against is the 18 -- adults 18-plus. We --

BY MR. GOTTLIEB:

Q. Do you know what percentage of the people who purchase Camels are 18 years and older?

A. Are 18 and older?

Q. Are 18 and older.

A. By my definition and what I would track and see and be aware of, it would be a hundred percent.

Q. So you believe that a hundred percent of the people who purchase Camels are 18 years and older?

A. I didn't say that. What I stated was what I know. And that is what the information we have. I have no idea what percent of Camel smokers are under the age of 18.

Q. Okay.

Do you believe it would be unethical to market to people who are under the age of 18? I'm saying market, you know, Camel cigarettes, for example.

A. Yeah, we -- I personally believe that this is an adult practice. And I define adults, by my personal definition, as 18 years of age or older.

Q. Right.

A. And it is my expectation that that is what market group we should be marketing our products against.

Q. You didn't exactly answer my question. Is it unethical to market to people under 18?

A. I would say my answer to that, from a personal standpoint, is yes.

Q. And as far as you know, is that the company's standpoint as well?

A. The company does not want kids to smoke. It believes that we -- we do have the right and are able to market our products to adult smokers, and that is the market that we do go after.

Q. So, you are trying to get people to -- who are smokers, to smoke your brand of cigarettes, if they're 18 years of age and older; is that correct?

A. Well, actually we -- at this point, it is 21 years of age or older, is the group that we market against.

Q. So you're not even marketing to 18-year-olds; is that correct?

A. We track performance against 18-plus, but only market our products against 21-plus. That is the age requirement to participate in what we -- our programs that we offer.

Q. When you say marketing -- you're marketing to people 21 and plus. Does that mean, if you put an advertisement, or a billboard, it is your expectation that only people 21 years and older will be influenced by that billboard?

A. It is our expectation or knowledge that we have researched that against a 21-plus smoker group in terms of getting their input. We do not research -- obtain research on less than 21 on any marketing research data that we do or less than 18 on any tracking information.

Q. We're talking here about -- from your perspective, what you're saying is you want to research and market and then go after an adult audience. And I'm asking you this. If somebody came to you and said: Here are some figures, and these figures show that smokers under 18, let's say from 13 to 17, have suddenly, in the past -- oh, I don't know, since 1987, switched to one of your

brands, let's say Camel, in unprecedented numbers, would you think that something should be changed in your advertising campaign to avoid that effect?

A. I think that would depend on the definition of "unprecedented numbers". I think it would depend on the source of the information that was being provided and -- and the reliability of that information itself.

Q. This is a hypothetical question.

A. I understand.

Q. Let's say that the source is one that you had some faith in. You believe the sources was reasonably accurate. And as far as unprecedented, I'm talking about in the 75-year history of the brand of Camel. That's a pretty long time period.

A. It's -- you're still asking me to speculate. But if there was conclusive evidence that I was made personally aware of, relative to using your example of Camel, that there was a specific thing that was causing that dynamic to happen, then I would, probably, from a personal standpoint, want to change that, yes. That's my personal opinion.

Q. And that's what you believe that RJR should do if somebody were to bring proof to RJR that an unprecedented number -- an unprecedented number of underaged smokers, under age 18 smokers, began smoking or switched to Camels --

A. Well, I would like to make it --

Q. -- since the repositioning of Camel and since the use of Joe Camel as an advertising vehicle?

A. There is a difference, in my opinion, among -- between begin smoking and switch to.

Q. Okay.

A. Because what I have been speaking to is, is that I do not -- would not feel comfortable myself in believing that whatever I was doing was causing underaged people to begin smoking.

Q. Would you feel comfortable if an underaged person switched from -- I don't know, from Marlboro to Camel, and he's 15 years old? Would that make you feel okay?

A. Well, it's not about whether I feel okay or bad. My point there is, is that if I was -- it was demonstrated to me that I was doing something out of -- not knowing it, that was causing that to happen, disproportionately to what was happening, and it was skewing younger from that standpoint or driving that at a disproportionate rate, then I would personally have a problem with that.

Q. We talked earlier about some brands of cigarettes that are skewed or targeted, let's say, towards women. We mentioned, I think, More as one such brand; is that correct?

A. More is a brand that, as we talked earlier, has -- it's business is -- a greater percentage of its business is female than male.

Q. That's just not an accident. That has to do with the way you design the product and the way you promote the product; is that correct?

A. No, it's not. I think I also referenced in my testimony earlier that, when this brand, as I understand it, because it was before my time, was initially introduced, it was introduced with a

slight male skew, if not more balanced. But the outcome ended up being that it was preferred by female smokers, and that's how the brand evolved.

Q. But, in recent years, would you agree that all advertising has used female models and that the brand is being promoted and advertised towards a female audience?

A. The majority of advertising in recent years, for the little that has been done on More, was -- that used user imagery, was female, yes.

Q. Are you aware of any brands that RJR sells which are purchased by blacks in a greater percentage than would be expected by the number of blacks in the population?

A. No, I don't believe I -- that I am. None that certainly come to mind.

Q. How about Hispanics? Same question.

A. Not that I'm aware of. No, sir.

Q. Do you know whether menthol cigarettes are purchased by blacks more than by whites?

A. Yes. Menthol smokers -- a greater percentage of menthol products are purchased by blacks than -- than whites, yes.

Q. What would be the skew among these menthol products?

A. I would be guessing. I just know that it's a higher development among blacks than whites.

Q. Which particular products would you have in mind? Among RJR products.

A. Well, Salem is a -- is a primarily -- or a totally menthol brand.

Q. Yes. Any others that are partly menthol, in terms of their brand?

A. Doral makes a menthol. Camel has a menthol entry. Vantage has a menthol; Now has menthol brand -- styles; More has menthol styles. As a matter of fact, I think every brand we have in the marketplace -- major brand we have in the marketplace, with the exception of Winston, has menthol styles as part of its --

Q. But Salem is the only major brand that is primarily menthol?

A. That is menthol, yes, sir.

Q. You would say that the parent brand there is menthol; is that the terminology?

A. The total brand is a menthol. That is its ...

Q. In terms of advertising, are -- to your knowledge, are black models used more in Salem advertisements than, let's say, in Winston advertisements?

A. I don't know the answer to that question. We have not spent much money advertising either of those two brands in the past couple of years. But --

Q. You don't spend much money advertising Salem or Winston?

A. In terms of user imagery. Your question was relative to --

Q. Right.

A. -- you know --

Q. When I see billboards, for example, you know, I may see a billboard with Salem. Am I more likely

to see a black model in a Salem billboard than a billboard with one of the non-menthol brands?

A. I don't know the answer to that. I would suspect that, you know -- well, I don't know the answer to that.

I'm trying to think of brands that use -- within our portfolio, that have user imagery in there that I could make that comparison to. And ...

Q. Have you ever discussed or seen any memos regarding the creation of a new product, in other words, a new brand, or even a new sub-brand, you know, like a menthol from a parent to non-menthol, that would target blacks as an audience?

A. I can't recall a situation where I've either been aware of or involved in pursuing a brand to target blacks, no, sir.

Q. How about Hispanics?

A. No, sir.

Q. Now, you tell me you don't track the percentage of product that is sold to people under 18, but you would track the percentage of product sold to people who were over 18; is that correct?

A. Yes, sir. Yes, sir. If I understand your question correctly, do we track smoking incidents and breaks by 18-plus, whereas we market to 21-plus, yes, that would be correct.

Q. Well, by a process of subtraction, if you have determined that 90 percent of your product is sold to people over 18, couldn't you then determine that 10 percent were sold to people who are less than 18?

A. If we tracked it that way, obviously we could. But that's not how we track it. The universe is smokers 18-plus. That is what we track against. And we only talked with that group. And that is how the buyer base is then allocated relative to ...

MR. HOPPER: Excuse me. What did you say, you only what with that group?

MR. BEACH: Could you just read the answer back, please.

(WHEREUPON, THE RECORD WAS READ BACK BY THE COURT REPORTER AS FOLLOWS:

That is what we track against. And we only talked with that group. And that is how the buyer base is then allocated relative to ...)

MR. HOPPER: Is that word you used Mr. Pennell, "talked," T-A-L-K-E-D?

THE WITNESS: Yeah. The reference there is, is that that is -- that we only collect information from smokers 18 years of age or older --

BY MR. GOTTLIEB:

Q. Are you aware of any sources of information regarding smokers under the age of 18?

A. I'm sorry?

Q. Are you aware of any sources of information -- you're saying it's not an RJR source, but, you know, maybe some other source. Are you aware of any source of information which

discusses the number of smokers who are under the age of 18, for any RJR product?

A. I can't speak to it for any RJR product. It is my understanding that the government does surveys or has done surveys that speak to incidents of smoking across all ages. But whether that is done on a by brand basis or what have you, I have no knowledge.

Q. Have you seen such a survey?

A. I have seen quotes relative to those surveys, be it in the newspaper or what have you.

Q. Other than in the newspaper, in terms of your business life. At a meeting, for example. Have you ever discussed such data?

A. I cannot recall ever having discussed such data, no, sir.

Q. Do you market any of your brands in packages of less than 20 cigarettes?

A. No, sir.

Q. No half packs, no three in a pack?

A. No, sir.

Q. Are you aware of any promotional policies by which RJR gives away cigarettes?

MR. BEACH: Do you understand the question?

THE WITNESS: In any capacity?

MR. GOTTLIEB: Yes.

THE WITNESS: Yes, we do have some programs that do that. Some of them require buy some, get some free, if you're talking about those. But you're talking about just absolute free --

BY MR. GOTTLIEB:

Q. I'm talking about somebody on the street saying, "Do you want to try this," and handing a consumer either a cigarette or a small package of cigarettes or a large package of cigarettes or a carton of cigarettes.

A. We -- we do not do random street sampling, if that's what you're asking. We do have, at sponsored events, opportunities for people, once they are carded and can demonstrate they are 21 years of age or older, the opportunity to do pack exchanges, where, prove to me you're a smoker, I'll take your pack and give you two of these -- of mine, or what have you.

Q. In other words, if somebody walks up as part of this program and says, "I've got this package with two Marlboros in it," you'll give them two packages of Winstons?

A. If -- as long as they have confirmed that they are a smoker --

Q. Well, they --

A. As long as they have confirmed and demonstrated, with a photo ID, that they are 21 years of age or older and confirm that they are a smoker and have cigarettes -- I'll be honest with you. I don't know whether one cigarette will count or whether it's got to be five or six or more in a pack, or what the exact stipulations or requirements are for that.

Q. Are these giveaways or exchanges, or whatever you wish to call them, are they done at the sports events that are sponsored by RJR?

A. That can be one of the venues for them.

Q. What are the other venues?

A. I think that those can also take place in -- in adult venues such as nightclubs or bars.

Q. Anywhere else?

A. Those are the ones that come to mind right now. There may be others, but those are the ones that come to mind right now.

Q. College campuses?

A. That would be against our policies and procedures.

Q. Do you know whether RJR has in the past given away cigarettes to consumers at college campuses?

A. I can't tell you that that has never happened. I'm not aware of that having happened. If it was, then I would expect that it would have been quickly remedied and fixed, because it is against our corporate policy and procedure, as well as against the cigarette advertising campaign.

Q. Well, that may be the policy today. I'm trying to find out whether you know if there was a policy in the past that was different?

A. No. I'm not aware of one that was any different.

MR. BEACH: Perhaps there's some confusion here, because I believe you represented in your question that all of your questions are directed to his personal knowledge.

MR. GOTTLIEB: Yes. I want to know what he knows was RJR's policy in the past. His personal knowledge. Sometimes I wish I could ask you about your personal knowledge, but you won't give me the answer. So I'm stuck with his.

MR. BEACH: And you'd probably be disappointed.

MR. GOTTLIEB: I have been often in life.

MR. HOPPER: He's just glad his name is not on the memo too.

BY MR. GOTTLIEB:

Q. In the course of your working for RJR, have you had contact with individuals from advertising agencies? And by "contact," I'm referring to both personal contact and contact by correspondence.

A. Yes.

Q. Would that contact be related to devising an advertising program for particular brands of cigarettes?

A. That could be an example of one of the reasons that I would interact throughout my career, at points and times of my career, with an advertising agency or individuals at one, yes.

Q. Okay. Has an individual who works for an advertising agency that was hired by RJR ever suggested to you that a particular promotion or advertising technique would be effective in attracting smokers under the age of 18?

A. No. I'm not aware of any instances where I've had any conversations with agency personnel, as you put it, that have suggested to me that this would be a -- something would be an effective way of reaching underaged smokers.

Q. Same question, but rather than limiting it to

ad agency personnel, anyone outside of RJR. Has anyone outside of RJR made such a suggestion to you?

A. I can't tell you that -- yes or no to that. I mean, to my recollection, no. But, you know, when you make it that broad in terms of the universe of anybody, what I can tell you is, is that, if that had happened, it certainly wasn't executed, because it is against my personal beliefs, as well as the company's.

Q. Have you been involved in the creation of new brands of cigarettes?

A. Can you define "new brands" for me so that --

Q. Well let's define it broadly, both as a new parent or as a new child.

A. Okay, so it can be the original styles or line extensions underneath it?

Q. Yes. If you thought that a line extension was appropriate, that would be, for the purpose of this question, a new brand.

A. Defined that broadly, I've been involved in that, yes.

Q. Which brands were you involved in the creation of?

A. There were several line extensions done on Camel that I would have been involved with, when you define it as broadly as you have.

Q. Which line extensions would those be?

A. Full flavor box.

Q. Anything else?

A. Ultralights.

Q. That's Camel Ultralights?

A. Camel Ultralights.

Q. Anything else?

A. There may be -- anything else on Camel?

Q. Anything else for any brand.

A. Oh, yeah. I'm just trying to collect -- there may be -- let's see. There were additional line -- styles on Doral that I've been involved in.

Q. What type of styles would that be?

A. Those might have been box styles or ultralight 100 styles.

There were additional More styles that were put into the test market. More Light White 120s or More Light Whites.

Q. Anything else?

A. I'm sure those are -- there are others, but that's what comes to --

Q. Well, let's talk about some of these for now.

A. -- to mind.

Q. Camel, which is one of my favorites. Why did you believe that a full flavor box style was, you know, appropriate to develop as a new style of Camels?

A. I believe the rationale at that point was is that the full flavor soft pack styles continued to be significant amount of the brand's business. I don't remember how much, but right much of the brand's business. And there had been a move in the marketplace, evidenced of increasing the box styles in the marketplace across all demographic groups, become -- age 18-plus, becoming more important in terms of the amount of business that kings was sold

through box styles versus soft pack.

Q. Would the target audience be any different for the full flavor box of Camels than for the Camel soft pack? You said it was going through all demographic groups; I just wanted to clarify that answer.

A. I can't remember that. I do remember that box, at that time, was growing among all demographic age groups, 18-plus. And I can't -- I just don't have the information to answer whether or not there was a difference between soft pack and box in terms of that evolution, understanding your question.

Q. What about the Camel Ultralights? Was that targeted at a specific audience within the greater Camel, you know, target?

A. There again, drawing on -- back several years, and as best as I can remember it, I think there were several reasons for the decision that was ultimately made, after I had moved off the brand, to introduce the ultralight styles. But I know that that was in the works prior to my moving off, as best as I can remember. Was factors of increasing Camel's overall number of styles that can generate incremental volume, if for no other reason than filling the pipeline.

If you have a franchise that -- or your business base is aging, then, as you look at the styles that they prefer or the emergent aspect of that adult consumer group -- smoker group wants, the ultralights are more appealing to them, you know, or more in their set of wants than others.

Q. If I can summarize that, are you saying that the Camel Ultralights are targeted more towards an older Camel smoker rather than a younger Camel smoker?

A. I think that's part of the equation. Yes, there it is.

Q. Is it because of health concerns among the older Camel smokers? Is that your understanding?

MR. BEACH: Objection.

THE WITNESS: No, that's not -- that would not be my understanding. It is because there is a propensity for the ultralight category, which has been out there for years, to be more skewed among older smokers than it is, you know, under 34.

BY MR. GOTTLIEB:

Q. But your understanding of this -- this category of people who are interested in ultralights -- and I'm not limiting it just to Camels, but in general -- is that to people who have health concerns regarding smoking of cigarettes?

A. Clearly I think everybody is aware of and -- the health risks of smoking. And it perhaps may be their way of reducing that risk by smoking a lower tar and nicotine product.

Q. So as far as your understanding is, this group out there, who are interested in low tar and nicotine cigarettes, especially ultra low tar and nicotine cigarettes, these are people who are more concerned about the health risks of smoking than,

let's say, the younger people --

MR. BEACH: Objection --

BY MR. GOTTLIEB:

Q. -- is that correct?

MR. BEACH: Objection to the form of the question.

MR. GOTTLIEB: You can answer.

THE WITNESS: No. I don't believe that that is a conclusion that I'm drawing, that you're stating for me. What I believe is, is that there -- what I know is, is that there are -- of the ultra low tar business, there are more 35-plus smokers who participate at that -- in those products than there are that -- in the 18 to 34-year-old.

BY MR. GOTTLIEB:

Q. But in your market research, do you know why? You're just telling me the result, that more people who are over 35 smoke a particular kind. Do you know what it is that makes them, that attracts them to that particular type of cigarettes?

A. I don't recall that at this time.

Q. Do you know whether research has been done by RJR to identify the reason why over 35 age people are more interested in low tar/nicotine cigarettes than younger smokers?

A. I would suspect that there has been, and I just don't recall it.

Q. Do you recall whether it has anything to do with health concerns?

A. I don't recall.

Q. You mentioned before that, according to your definition of addiction, you don't believe that cigarettes are addictive -- whether nicotine is addictive; is that correct?

A. By the class -- what I define as a classical physiological dependence on the thing, dependency like cocaine or heroine, I do not consider cigarette smoking addictive by that definition, no, sir.

Q. Have you seen any scientific research or reports of such research that suggested that cigarettes are indeed physically addictive?

A. Have I seen or read any research documents?

Q. Yes.

A. No, sir.

Q. Have you read or seen reports of such research documents, perhaps reported in the newspaper?

A. I have generally read articles that might have appeared in the newspaper, as an example, yes, but read the full reports or details.

Q. Have you seen any RJR documents that suggested that nicotine is addictive?

A. I have never read any RJR document that would suggest that nicotine is addictive, no, sir.

Q. Have you had any conversation with any employee of RJR regarding whether or not nicotine is addictive?

A. Could you give me that question again?

MR. GOTTLIEB: Could you read it back, please.

(WHEREUPON, THE QUESTION WAS READ BACK BY THE COURT

REPORTER AS FOLLOWS:

QUESTION: Have you had any conversation with any employee of RJR regarding whether or not nicotine is addictive?)

THE WITNESS: You mean me asking some -- employees of RJR whether it is or isn't it, be it --

BY MR. GOTTLIEB:

Q. A conversation doesn't mean that you have to ask. Somebody could have said something to you.

Is there -- did you engage in any communication, be it oral or written, with RJR employees regarding whether or not nicotine is addictive?

A. I have never initiated any discussions on that. I have had employees of mine ask me what my perspective is on that in casual conversation, and provided it to -- to them no differently than I just have here. Because that is my opinion.

Q. Is that the opinion of RJR Nabisco? To your knowledge?

MR. BEACH: Objection to the form of the question. To the extent you can answer it.
BY MR. GOTTLIEB:

Q. To your knowledge.

A. I can't answer for RJR Nabisco.

Q. How about for RJR Tobacco Company? Is that the company position?

A. I think, generally speaking, that is -- it would be the company's position, my personal opinion of what their position would be.

Q. Does your wife smoke cigarettes?

A. Socially.

Q. Does that mean occasionally?

A. Occasionally. She might smoke five cigarettes a month. She's a social smoker.

Q. How many cigarettes do you smoke on a daily basis?

A. Approximately two packs.

Q. This must be a tough day for you.

A. Not that bad.

Q. Has your wife ever suggested that you quit smoking cigarettes?

A. No.

Q. Has your doctor ever suggested you quit smoking cigarettes?

A. They have suggested to me that they would prefer that if I didn't smoke -- that I didn't smoke.

Q. Did they tell you why?

A. Because of the risks associated with smoking.

Q. They didn't mention any particular risks?

A. I don't remember us getting into that discussion.

Q. They just said because of the general risks?

A. The discussion went more along the lines of: We're both aware of the risks of smoking; I would prefer that you just didn't. And that was the extent of it.

Q. So the doctor just assumed you were aware of the risks of smoking?

A. It's pretty general knowledge in everybody -- I think everybody knows what -- what those are, in my opinion.

Q. But you don't think that it's -- that smoking causes lung cancer, for example?

A. I said I didn't know.

Q. Oh.

A. Not that I think it does or it doesn't.

Q. Do you mean in the sense that you don't have definitive absolute proof? Is that what you mean?

A. I mean it like I say it. I don't know whether it does or it doesn't. I'm not the expert in that area. And from what I do read, which is very limited on it, or what have you, there seems to be those that feel very strongly this way, others that say that's not the case. The truth of the matter is I don't know.

I acknowledge that there are risks associated with smoking.

Q. You've read reports recently saying that that is not the case, that smoking does not cause lung cancer?

MR. BEACH: Objection to the form of the question.

BY MR. GOTTSLIEB:

Q. Is that correct?

A. That's not what I said. What I said is, is that I don't know, because I am not a scientist, I am not a chemist, I am not a doctor, relative to what it is. I don't know whether it does or whether it doesn't. I don't know.

Q. When you say "know," I mean, I don't know how many moons there are around Jupiter, because I never went up there and counted, but I read it in science books and I, quote, know because I read it there. Now, in that same process, not did you know because you did research as a -- you know, as a scientist, but based upon what you have read and based upon your experience in working for RJR for 18 years, do you believe that there is a strong link between smoking and lung cancer?

A. I believe there are risks associated with smoking, and lung cancer is one of those.

Q. Do you believe it's a strong risk?

A. I don't know whether it's a strong risk or not. I don't know.

Q. Okay. Have -- does your doctor smoke? Do you know?

A. My internist? No, she does not.

Q. Do you have other relatives who do smoke?

A. Yes, I do.

Q. Have you ever suggested to any of them that they might consider quitting smoking?

A. I've never had the discussion with them one way or the other, no.

Q. I asked you about your wife before, whether she has advised you to quit, and you said that she has not. Has anyone else? We've talked about your doctor and your wife. Has anyone else, a relative or a friend, ever suggested to you that you quit smoking?

A. Yeah, I have had people that I know suggest to me that I stop smoking or cut back, yes.

Q. And did they tell you why that they thought you should do that?

A. No. We never launched into a discussion about why we should -- I should or shouldn't.

Q. Did you ever say that you would find it very difficult to quit?

A. No, I didn't.

Q. Did you ever try to quit?

A. No, sir.

Q. Did you ever try to cut back?

A. No, sir.

Q. In the course of 25-odd years since you've been smoking -- is that roughly the right number?

A. I'm 40. Let's say, what, 22.

Q. I wasn't that far off.

A. Pretty close.

Q. Didn't mean to insult.

A. That's all right.

Q. In the course of those 22 years, has your smoking increased, decreased or remained the same?

A. I'd say it's -- for 20 of those 22 years, probably, or the vast majority of them, it's been about the same.

Q. Do you know whether there is any general pattern among smokers of smoking more as they age? In other words, young adult smokers smoke a certain amount from the time they are over 25, they smoke more than they smoked when they were 18 to 24. Do you know that as a correct statement?

MR. BEACH: You're talking about quantity per day?

MR. HOPPER: Yes.

MR. BEACH: Just to clarify that.

THE WITNESS: Yes. Part of the data we collect is -- I believe, is not only if you smoke, for those smokers, but rate per day.

BY MR. GOTTLIEB:

Q. And it is true that they -- that, in general, as people age, they smoke more. Is that correct?

A. I believe in -- as a general observation, there reaches a point where their incidents per day increases, but then it plateaus and perhaps even begins to fall off. But I don't think that it just keeps going up and up and up and up and up.

Q. Earlier we showed you what is -- we have marked as Plaintiffs' Exhibit Number 6, the Younger Adult Smokers Strategies and Opportunities document, written by Diane Burroughs. And you stated, I believe, that you had not seen that document in this form. Did you see it in some other form?

A. No. There are bits of this that I am familiar with and have seen in other forms, but not this document in another form. I'm sorry if I misled that.

Q. It still isn't quite clear. In other words, there are charts in that that you have seen and are familiar with? There are data in there that you're familiar with? Is that what you're saying?

A. Yes. There are -- there are parts of this, in terms of -- not so much data, but the theories that are there, that I have seen restated in other presentations and formats.

Q. And by "this," we're talking about, in general, the principle of marketing to the young adult smoker?

A. Correct, the principle of marketing to 21 to 24; this speaking to 18 to 24, because that was the policy at that time.

Q. When did that policy change?

A. I believe that policy changed in May of 1992.

Q. Do you know why it changed?

A. There again, I believe that the reason it changed was, is because we wanted to make sure that we were consistent in all of our programs being marketed to the same age group, because we had some that were being marketing -- acceptable to 18 to 24 -- or 18-plus, others that were 21 to 24-plus. And the other thing that was expected to do was to give us a break or a buffer relative to us marketing to 18-plus, ensuring that, as best we could, as another buffer, that we would market to 21 to -- 21-plus.

Q. This is 1992 that the change was made?

A. I believe so, yes, sir.

Q. Do you know who made that suggestion to make this change?

A. I don't remember where the suggestion or the recommendation originated from. I know that, at that time, our executive vice president of sales and marketing communicated that to all of us and the employees of the company.

Q. You talked a while ago about your involvement, when you were first with the company, with vending machines. Were there certain brands that were sold in vending machines more than others?

A. Not that would be inconsistent with -- as I recall it, that would be inconsistent with the market trends of that market overall.

As a matter of fact, if my memory serves me correctly, in terms of the data that we would use to go in and justify how many slots we wanted in a machine, it would be based on cases ordered and shipped by the distributors in that market, so that you could try to get your fair share of the percentage of space in those machines and the brands accordingly.

Q. Do you still have a knowledge today about which brands are being marketed through vending machines?

A. No.

Q. Would you know, for example, whether Camels are sold more through vending machines than other brands?

A. No idea. No, sir.

MR. BEACH: Excuse me. Would it be possible to take a five-minute break?

(DISCUSSION OFF THE RECORD)

(RECESS TAKEN FROM 4:40 P.M. TO 4:44 P.M.)

BY MR. GOTTLIEB:

Q. Would it be correct to say that there are brands that RJR makes that are very similar in taste to brands that competitors make? Such as Philip Morris or Brown Williamson.

A. That would really depend on your definition

or -- of "similar".

Q. Well, why don't we do it this way. Are you aware of any instance in which, for lack of a better term, blind taste tests were done to see if a person could identify whether they were smoking their favorite brand or a similar brand manufactured by a different company?

A. Yes. That -- there have been, and is, research that is done among adult smokers --

Q. I'm only talking about adult smokers.

A. -- asking them to, on a blind basis, compare this product to these prototypes, if you will, or different options versus a competitive brand or one of ours, yes.

Q. Is this a test that RJR has done? I mean, you mentioned there were several tests done. Is that by outside researchers, or are they by RJR people?

A. Well, I think they're done both ways. And I think they -- I'm not real sure exactly how -- when we commission a test from the product testing group to be done for Doral, let's say, whether or not that is all done internal or outside. I would imagine that, for the internal testing panel we have, it's done there. And for that that is done outside, then our folks are overseeing a research supplier group that conducts that test. I'm just not real clear on that, quite honestly.

Q. Can you tell me whether you are aware of any tests done comparing Camels to any other cigarette? In a blind taste test fashion.

A. Realizing, I think we have, that all of this is confidential -- is treated as confidential, yeah. I mean, Camel considers its primary competitor to be Marlboro. And so it is -- it is -- I would imagine that when -- that today they are still using Marlboro as who they do their competitive testing against.

Q. And in a blind smoke test, if we can use that term, let's say you have a hundred people -- I don't know how you do it exactly. But let's say you have a hundred people who take a puff of Marlboro and take a puff of Camel. How many can identify which is which?

A. I don't know that they are asked to identify which is which, as much as they are to simply rate whether this product, on a set of attributes, meets or -- either equals or is ahead of or worse than their ideal.

And then you look at where they are versus their ideal, and it will tell you very quickly whether they like either of the -- any of the products you have put in front of them or whether or not, perhaps, they have been able to, you know, have their own brand come close to ideal because that's the brand they're used to smoking.

Q. Do you have -- are there instances in which people say that they like one brand better, but they purchase the other brand as their regular brand?

A. You mean --

Q. For example, does it happen that the Camel smoker will do this blind smoke test and say, "I

prefer the test of the Marlboro"? Or vice versa. Perhaps the Marlboro smoker smokes them both and says, "I prefer the taste of the Camel".

A. I would think that you would get some of that, but I don't know whether that -- I would not think that's predominant, no.

Q. Are you familiar with whether people in general can tell the difference between, quote, similar brands?

A. That's why I initially asked the definition of similar, because --

Q. Well, now you know what I mean by similar, brands that are in direct competition with each other.

A. But in terms of whether they can tell the difference or whether they see them as being similar, I think that varies too.

Some smokers are very discerning, relative to products and how one tastes versus the other, et cetera, and others are not -- of adult smokers are not discerning very much at all.

Q. Well, I don't have any secret tests up my sleeve here. I'm just going to ask you: Do you know of what the percentage findings are in these types of tests?

A. If that they are specific to my areas of accountability, then I would be aware of those, yes, absolutely.

Q. Well, what findings are you aware of?

A. Well, you know, I can give you the findings relative to Doral product testing --

Q. Okay.

A. -- as an example.

What we know on that is, is that, when we do blind testing, our product is -- is rated better than our competitors among claimed usual Doral smokers.

Q. Who are your competitors for Doral?

A. That would be brands like Basic and GPC.

What I also know is, when you go to Basic and GPC smokers and ask them to smoke both -- smoke both products, excuse me, and then give you how they feel about those products, that Doral product is a parity to both Basic and GPC. All right? So what that says is, is that I've got a franchise that continues to prefer this product, all right, versus the competitive alternatives, and I am at parity relative to adult GPC and Basic smokers, who find my product, on a blind basis, equal.

Q. Does it also say that the deciding factor as to which brand the person would actually purchase and smoke would be promotion and advertising?

MR. BEACH: Object to the form of the question. You can answer.

THE WITNESS: No, I don't think it automatically says that. I think what it does say is that the image, whether it's accomplished through advertising, promotion or whatever means --
BY MR. GOTTLIEB:

Q. How else do you create an image, if it's not through advertising and promotion?

A. But I think it's the image that is driving

that versus just saying it's advertising and promotion. I can advertise and promote a brand purely on pricing, and have done nothing, per se, to establish or reestablish, whichever I was trying to do, an image.

Q. Well, when I was talking about -- I was asking about promotion, I wasn't talking about pricing. I see that as a separate area.

But you agree, then, that it is image that makes the difference in having people select which of these similar brands they will purchase?

A. As I've said before, those two things, product itself and image, play a factor, and that the role they play varies by brand and by consumer.

Q. You had mentioned earlier that you have some contact with officers of RJR Nabisco; is that correct?

A. Yes. Some limited contact, that's correct.

Q. Can you describe in some more detail what that contact is.

A. Periodically -- or not -- not frequently, we will meet to -- to update -- that's what it is; it's not a review process or approval process, it is an update. To update members of RJR Nabisco headquarters what we are doing. There are obviously --

Q. When you say periodically, you're talking about once a year, twice a year, four times a year?

A. It may be four times a year. It just varies, but it's not a lot.

And then obviously there is, you know, what I will characterize as providing them with the information for them to roll up each individual company, you know, as the overseeing body.

Q. You're telling them what you're doing --

A. That's correct.

Q. -- and what the results are. We have had this sales improvement or we've had this sales decline and we've had this new product and, you know, so far these are the results. That's the type of information you're giving them?

A. Input, yes. But there is not any decision-making discussions going on. That's what I'm trying to differentiate.

Q. I understand.

Do they give you any input? I mean, you told me what you told them, now I want to know what did they tell you, other than, "Nice to see you again"?

A. Their input back to us relative to how we run our business, my experience, limited as it may be, is pretty limited in terms of the feedback they give.

Q. Okay. Can you give me an example of some sort of feedback that you've gotten from RJR Nabisco?

A. Yeah. An example of feedback that would come from them is, is that the last time we met you told us you were planning on doing this, this, this. How is that going?

Well, you know, we're on track, or we're off track, or what have you, in terms of where we are, would be our response type thing. And then

they would say, well, you know, we need to better understand where you think you're going to come out, because we've got to consider that as -- as part of the -- you know, the total picture.

But, you know, we're basically -- you know, Andy Schindler is running the tobacco company and reporting to them on an as-information basis more so than a direction basis.

Q. Has anybody from RJR Nabisco given you input - and it could be indirectly, if you know it came from them -- either directly or indirectly, regarding marketing to young adult smokers?

A. No.

Q. To underaged smokers? Same question.

MR. BEACH: I object to the form of that question.

THE WITNESS: No.

BY MR. GOTTLIEB:

Q. Do you know whether Andy Schindler is a member of the Board of RJR Nabisco?

A. I don't believe he is, no, sir.

Q. Do you know if he's an officer of RJR Nabisco?

A. I don't know that question, but I don't think he is. No, sir.

Q. Do you have any dealings with any individuals who, shall we say, are wearing two hats, an RJR Tobacco hat and an RJR Nabisco hat?

A. I'm not aware of anybody wearing two hats.

Q. Earlier today you had mentioned that you had reviewed a number of documents prior to -- in preparation for this deposition. Did your review of those documents refresh your recollection regarding any of the subjects that we discussed today? And by "we," I'm of course including the questions that Mr. Hopper asked you earlier.

A. I'm not -- I'm not following your question. I'm sorry.

Q. Well, we asked you questions in a whole number of different areas, and you have seen some documents that may have refreshed your recollection, reminded you of what happened or what the facts were regarding those areas. And I'm asking you, did any of the documents you saw, in preparing for this deposition, refresh your recollection, remind you of the facts on the areas that we discussed here today?

A. I'd have to answer that question not really, no, sir.

Q. I'm sorry?

A. Not really.

Q. Not really?

A. Not in any significant -- if I'm understanding the question correctly.

Q. Well, did you look at something and say, Oh, yeah, I didn't remember that, but that really -- you know, I remember that now, and then one of us asked you a question on that subject, and your response incorporated the information that you now remember, based upon the document that you reviewed?

A. It's my opinion that not much of that at all happened, no, sir.

Q. When you say "not much" of it, do you know whether any of that happened?

A. I can't say that none of it did, but I gave the best answer that I can.

Q. Okay.

MR. GOTTLIEB: I have no further questions at this time. Although I believe Mr. Hopper does have one or two more additional questions.

MR. HOPPER: Well I had one of those creative bursts I was referring to earlier that I might have. But I'll try to be brief.

EXAMINATION

BY MR. HOPPER:

Q. What magazines routinely do RJR ads appear in?

A. Give me a specific brand, or are you just asking --

Q. All brands.

A. All brands?

Q. Yes.

A. That varies.

MR. BEACH: You're asking for their media list? Is that what you're asking about?

MR. HOPPER: I'm asking what he knows.

THE WITNESS: Well, I mean, it varies. There are some -- there are some magazines that a lot of brands use in this company and others don't use it at all.

BY MR. HOPPER:

Q. Would the menthol brands, for example, be more likely to appear in Ebony and Jet, if I were to go and purchase those -- copies of those magazines?

A. I don't know that we're currently advertising in Ebony or Jet at all. I don't know --

Q. Do you know if you've used marketing and advertising dollars to target ads in Ebony and Jet?

A. I know that we have run ads in Ebony and Jet in the past, yes.

Q. Would they have been likely to be Salem?

A. I can't speak for Salem. The one brand that I -- or a brand I know has run in Ebony and Jet was the More brand.

Q. What about a brand named Uptown?

A. I'm not familiar with what the media list was on Uptown.

Q. But you do recall developing that new brand; is that true?

A. I was not involved in the development of that brand.

Q. I didn't ask if you were involved in it. You recall the development of that new brand.

A. I'm aware that there was a brand called Uptown developed in the new business development group, and -- yes.

Q. That was targeted toward African-Americans?

A. I can't characterize how it was defined in terms of its target, no, sir.

Q. Well, to put it in your terms, then, its skew factor was toward African-Americans?

MR. BEACH: Object to the form of

the question.

THE WITNESS: It was a menthol product.

BY MR. HOPPER:

Q. Which you testified to earlier tended -- tends to be the brand purchased more often by African-Americans or blacks?

A. Blacks have an higher index in purchasing menthol products than -- than whites, yes.

Q. Is that because that you have a perception factor that you've gained through your marketing research that shows they believe menthol cigarettes are safer?

A. I'm not aware of that at all, no, sir.

Q. You've never seen anything on that at all?

A. No, sir, I haven't.

Q. Have you ever seen any research or any marketing study that indicates, when blacks are surveyed and asked the question about why they smoke menthol cigarettes, that they believe they're safer?

A. I don't imagine -- I'm sorry --

MR. BEACH: Can you read the question back, please.

MR. HOPPER: He's already answered.

(WHEREUPON, THE QUESTION WAS READ BACK BY THE COURT REPORTER AS FOLLOWS:

QUESTION: Have you ever seen any research or any marketing study that indicates, when blacks are surveyed and asked the question about why they smoke menthol cigarettes, that they believe they're safer?)

MR. BEACH: I was going to object to the form of the question. Mr. Hopper has pointed out you have answered it. Unless you want --

THE WITNESS: I believe my answer was that I don't recall having seen that.

MR. HOPPER: Is that what his answer was, Linda?

(WHEREUPON, THE ANSWER WAS READ BACK BY THE COURT REPORTER AS FOLLOWS:

ANSWER: I don't imagine -- I'm sorry --

MR. HOPPER: So we'll let him finish.

THE WITNESS: I have no recollection of seeing that data.

BY MR. HOPPER:

Q. I realize you've testified you're not a doctor and you're not a scientist and you're not an expert, but you are in marketing and you have seen a lot of data. Do you know why menthol is used as a constituent within some brands?

A. Your question is why there are menthol brands made available to adult consumers? I mean, is that --

Q. No, I didn't ask that, about adult consumers at all. I asked: Do you know why menthol is included as a constituent in cigarettes?

A. Why menthol is included as a constituent in the product itself?

Q. Uh-huh.

A. I'm -- why we put menthol in the products?

Q. Sure.

A. Well, I have no idea, in terms of your question, why we put menthol in the products. Menthol products have been available to consumers for eons of time. There is a group of consumers that prefer menthol products from a taste standpoint, and so we continue to make those available to them.

Q. That's right. And isn't it true that, as you've looked at all these other consumer brand company products from a brand marketing standpoint, that blacks and African-Americans consume a substantial amount of the menthol cough drop market?

A. I'm not aware of that -- or don't recall that --

Q. You don't know anything about that at all?

A. I don't recall that, no, sir.

Q. You've never seen any marketing studies on that at all?

A. I don't recall that, no, sir.

Q. And you don't have any opinion as to why menthol is included in so many of your cigarettes? Because you listed off quite a few of them a minute ago. There must be some reason driving that, pretty significantly.

MR. BEACH: Objection to the form of that question.

THE WITNESS: Well I think, as I answered earlier, that the reason for that is that there is a sufficient group of adult smokers, and they all are not black, that choose to smoke menthol products. And if any brand wants to reach the -- a mass audience of adult smokers, then they need to have in their -- in my opinion, their portfolio of brand styles, menthol styles.

BY MR. HOPPER:

Q. Do you ever confer with your scientific division or your scientific research division, in your capacity as a senior officer of the company?

A. Specific to?

Q. Any topic whatsoever.

A. In terms of our product research?

Q. Yeah. Do you ever talk to those folks in your company?

A. To our product research --

Q. Yes, the scientific department.

A. Well, I would like to clarify product research versus scientific.

Q. I may not have the right name, but those people who, in your company, have knowledge of the science and of the chemistry and of those various aspects of the manufacture of your product.

A. I do not spend much of my time at all interacting with the chemists and, quote, scientists within the products -- R&D products area. Most of my time is spent with the product development people for the specific brands under my oversight.

Q. But you have talked to them from time to time, whether in a professional context or even, perhaps, in a social context.

A. Yeah. I mean, they --

Q. Do they send you reports, as a senior officer in the company?

A. No. I --

Q. From that division?

You don't ever see any scientific reports coming out of your company on your products?

A. I am involved, as I said, in very little information in that area. There are updates and times that we are covered off on information, but it is not a routine occurrence.

Q. So you wouldn't know or have any information at all that the reason that menthol is included in cigarettes is to free cilia in the throat so that the nicotine and other particles can be consumed more fully and deeper into the lungs?

MR. BEACH: Objection to the form of that question.

THE WITNESS: I'm not aware of that.

BY MR. HOPPER:

Q. You're not aware of that at all?

A. No, sir.

Q. You don't have any knowledge about that at all?

A. No, sir.

Q. After almost 20 years in the company?

A. That's correct.

Q. Why do you have low tar in some cigarettes?

A. Well, back to the original discussion on that issue, it is because consumers -- adult consumers have indicated that they have a preference for lower tar products and we make those available to them.

Q. Quite frankly, most of the studies show that consumers don't even know -- haven't even known that there is tar in cigarettes. So how can you say the consumers prefer it? Isn't it that you made adjustments in repositioning the cigarettes, to lower the tar?

MR. BEACH: Objection to the form of that question.

You can answer it, if you can.

THE WITNESS: No, I don't believe that's the case at all.

BY MR. HOPPER:

Q. Driven by marketing concerns?

A. I believe you can go back to the mid '60s, when a report came out suggesting -- or stating that lower tar and nicotine products were preferable. And a brand called Kent, as I recall it, from a historical standpoint, demonstrated its ability to respond to that. And that is where, and as I understand, the proliferation of lower tar products began.

Q. That was the one with the micronite filter?

A. I don't remember the filter.

Q. Are lower tar and nicotine cigarettes safer?

MR. BEACH: Object to the form of

the question. It's ambiguous.

If you know what he means by the term "safer," you can answer the question.

MR. HOPPER: You object to every question I ask, for one reason or another, Counsel. There's nothing ambiguous about asking him if the reason that they lower tar in cigarettes is to make it safer. That's a very simple English worded question.

MR. BEACH: My objection stands.

THE WITNESS: I believe that there are consumers that feel that they have -- they are reducing the risks of smoking by smoking a lower tar and nicotine product, yes.

BY MR. HOPPER:

Q. Is that why you provide that product and those brands to the market, then?

A. From what standpoint?

Q. From the standpoint you just answered, to fulfill that consumer interest.

A. I think the intent is, is to -- or the objective is to provide them with lower tar products. And if that is determined by them to be what they want, from a preference standpoint, in choosing their product, then they have that opportunity to do so.

Q. Why don't you have low tar in Camels then?

A. We do have ultralow tars in Camel.

Q. Since when?

A. Since probably 1990 or '91, I would guess. I don't remember the specific dates.

Q. At one point you -- in the early '70s, as I understand it, RJR marketed cigarettes under a brand which had 20 milligrams of tar and 1.3 milligrams of nicotine, and you lowered that tar to 14 milligrams of tar and .9 to 1.0 milligrams of nicotine. Why did you do that?

A. I'm not familiar with what you are referencing.

Q. You don't know anything about lowering tar by those levels at all?

A. I've already referenced that I don't remember us making specific decisions to lower tar and nicotine or what have you, and I certainly can't speak to the example you're giving me, with no history or documentation or what have you.

Q. What are the effects on your sales figures and receipts when you lower or increase tar and nicotine in a cigarette, by any brand?

A. I have no idea.

Q. As a senior officer in the company, you don't have access to those kind of reports?

A. I'm not aware of us doing that at all, no, sir. I couldn't tell you whether we increased sales or earnings from lowering or raising tar and nicotine in our product.

Q. Well that seems like such a substantial aspect of repositioning a cigarette that it would strike me as though you would want to see what the sales impact of that change would be. Is that not true?

A. Well, if one was to believe that lowering or raising the nicotine in a brand, or tar and

nicotine levels in a brand, was an effective way to reposition the brand.

Q. Well you've done it substantially in the past.

A. It's not a matter of raising or lowering it, it is done as an option of providing additional alternatives beyond the ones that went there. It wasn't taking one away and putting another one in its place.

Q. Well, does it work? Is it effective, from a sales standpoint, that once you do that, do you find your market responsive? Do your sales increase? Do your sales decrease as a result of lowering it or, alternatively, increasing it? What's the effect?

MR. BEACH: You're asking him to isolate this one component and respond to your question in that respect?

MR. HOPPER: From a sales standpoint, whether or not he can tell me if the sales increase or decrease as a result of increasing or decreasing the tar and nicotine in cigarettes.

MR. BEACH: I think he's answered that.

THE WITNESS: I cannot answer that.

BY MR. HOPPER:

Q. You don't know anything about that?

A. I can't answer what happens when --

Q. Who in your company would?

A. I don't know that -- who I would suggest that somebody talk to about whether you can increase or decrease -- whether it increases or decreases sales to change the tar and nicotine levels in tobacco -- in cigarettes.

MR. HOPPER: Would you mark this for me.

(PLAINTIFFS' EXHIBIT NUMBER 10 WAS MARKED FOR IDENTIFICATION)

BY MR. HOPPER:

Q. Mr. Pennell, I'm showing you what has been marked as Plaintiffs' Exhibit Number 10. It's an advertisement about Doral. Why don't you read that bold caption to me and then what it says underneath it, up at the top there.

A. (Reading)

How does your cigarette stack up against Doral? The cigarette low tar and nicotine smokers swear by.

Q. Can I see it again for a second?

What do you think that ad is trying to say?

A. I think what it's trying to say is, is that here is a brand that offers lower tar and nicotine and doesn't compromise taste. How does your cigarette stack up against Doral? Because down here it says, "I swear you can really taste me."

And I know that there's -- that many consumers' perception is that lower tar cigarettes do not deliver the same amount of taste that they get from a fuller flavor cigarette.

I would also point out that I think --

although it doesn't say on here, that this would probably be advertising from sometime in the '60s, when Doral was initially introduced, before it was taken off the marketplace. I don't know. I don't see an exact date on there.

Q. Isn't it true that you then came along and increased the tar and nicotine in Doral sometime after that?

A. I'm not aware if that happened at all, no, sir.

Q. When you still worked down in the brand management area of RJR, did you know or work with a woman named Penny Cohen?

A. Yes. I know who Penny Cohen is, yes.

Q. And she was a marketing research manager for RJR at the time?

A. What time?

Q. In 1989.

A. Yes. I don't believe she was on my business, but I believe she was in the marketing research department, yes, sir. I can't recall whether she was or wasn't on my business.

MR. HOPPER: Mark this one for me.

(PLAINTIFFS' EXHIBIT NUMBER 11 WAS MARKED FOR IDENTIFICATION)

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MR. HOPPER: Mr. Pennell, I'm showing you now -- about to show you now what has been marked as Plaintiffs' Exhibit Number 11. It's a letter from the Gene Shore Associates advertising agency in Pennsylvania to Ms. Penny Cohen, whom you've just identified. Perhaps you could take a moment and look at this.

And we'll go off the record for that period of time.

(WITNESS REVIEWS DOCUMENT OFF RECORD)

MR. HOPPER: Back on the record.

BY MR. HOPPER:

Q. Isn't this letter that you've just read, Mr. Pennell, a good example of the way that your marketing concepts are expressed through one of those vehicles you identified very early on in this deposition, that being advertising and the way you target market your products to specific marketing -- to specific populations?

A. I think this is an example of that taking place. I do not believe that it would be representative of how every brand goes about positioning their brands with -- within our portfolio brands, no.

Q. It's a pretty good example of the way Dakota has been marketed and advertised and targeted directly toward women; isn't that true?

MR. BEACH: Object to the form of that question.

THE WITNESS: It -- what this does, in my reading it, because, there again, this is another document I'm not familiar with, it lays out a response from some research that was done from Gene Shore Associates, which is not an advertising agency, it is a research -- outside supplier research firm, is providing research results back to the R.J. Reynolds product research aspect, in

terms of what they observed, what they saw, and what might, in fact, be done.

What I don't know is, is whether or not that specific approach and the specific way they've talked about is what actually went in the test market that took place on that -- on that brand.

BY MR. HOPPER:

Q. Well, I think the ads would speak for themselves. We could go back and look for them probably.

In one part of this letter, there's a memorandum, which you've now seen, from a Mr. Baggett -- to a Mr. Baggett from a Ms. Cohen, and the subject is Younger Adult Female Smoking Population. And that memorandum begins: (Reading)

Per your request, I have determined the current total U.S. younger adult female Marlboro smoker population size.

So, apparently, you were -- you, in your marketing, have compared Dakota, from a marketing standpoint, to Marlboro?

A. I'd like to ...

MR. BEACH: Can I see that part of the document, please?

(DOCUMENT HANDED TO COUNSEL)

MR. BEACH: Let me just make it clear for the record that it does not appear that -- that what has been marked as Plaintiffs' Exhibit 11 is one document. So, I mean, the documents are what they are.

MR. HOPPER: Well, from our standpoint, as an exhibit it's considered to be a document.

MR. BEACH: It's a collection of pieces of paper with writing on them. I will certainly grant you that.

MR. HOPPER: Come, come, now, Counsel. It's an exhibit in this deposition now.

MR. BEACH: Well, you've marked a collection -- apparently -- I don't know what they are.

MR. HOPPER: That's what I have referred to it as, is Plaintiffs' Exhibit Number 11.

MR. BEACH: No quarrel with that. I just want to make sure the record is clear that these were not necessarily one document.

MR. HOPPER: I haven't said they are. I've characterized them as two different documents, by referring to this as a letter and this as a memorandum.

MR. BEACH: That's fine.

THE WITNESS: Yes, I do not know, to answer your question, who Mr. J. Baggett is. I'm not familiar with that name. But what this is providing from the business information department is a breakout of female Marlboro smokers and adults aged 18 to 24.

BY MR. HOPPER:

Q. How in the world did you get that kind of

information?

MR. BEACH: What kind of information are you asking?

MR. HOPPER: On Marlboro.

THE WITNESS: Well, I would imagine it comes from this same tracking that I've referenced several times before, today, that we do among adults 18-plus in the marketplace.

BY MR. HOPPER:

Q. Are you familiar with a survey known as the Future -- as the Michigan Monitoring Future Survey?

A. I don't believe I am, no, sir.

Q. You've never heard of that?

A. That's not a familiar term to me.

Q. If I told you that that was a study that's widely followed by tobacco researchers, you would be, then, in total shock and surprise?

MR. BEACH: And let me not surprise my esteemed counsel on the other side of the table by objecting to the form of that question.

Go ahead and answer if you can.

MR. HOPPER: That's the best you've done all day. I like that one.

THE WITNESS: All I can tell you is, is that I'm not familiar with that term.

BY MR. HOPPER:

Q. So you've never seen that study or heard anybody talk about it?

A. Not that I'm aware of, no, sir.

Q. It is -- it is a survey that's widely followed by the tobacco -- by the research -- marketing research components of the tobacco industry. If I told you that, would you have any knowledge of that at all?

A. You're telling me that doesn't give me any more knowledge of my recollection of this document, no, sir.

Q. If I told you that that survey, which is widely relied upon by the industry, has shown that the surge in teenage smoking in the '90s has coincided with sharp expansion by RJR in giveaways of items like T-shirts in return for coupons accumulated by buying their cigarettes, would that surprise you?

MR. BEACH: Objection to the form of that question.

THE WITNESS: I can't respond, because I haven't seen the document.

MR. BEACH: Why don't you show him the document that you're asking him about.

MR. HOPPER: I don't -- I don't have the document. I'm just asking what his knowledge is.

MR. BEACH: Fair enough.

MR. HOPPER: I want to know if he has knowledge of this survey.

MR. BEACH: You ascertained that you've gone beyond that, making representations about what the survey reports --

MR. HOPPER: I'm telling him what it says because I don't have the document. And I'm trying to find out if he's familiar with it. I'm entitled to ask leading questions, because I'm

doing the cross-examination.

MR. BEACH: I'm not objecting to your asking leading questions. I'm simply making an observation about your questions, that I'm sure you're patently aware of.

BY MR. HOPPER:

Q. If I told you that that survey, which is heavily relied upon by the tobacco industry, has revealed research that showed that your company and other tobacco companies have had limited to no success in preventing those various types of promotional products of reaching the hands of teenage smokers, would that provide you -- would that surprise you?

MR. BEACH: Object to the form of the question.

THE WITNESS: There is nothing you're going to tell me that I can respond to on this document, because it's a document that I haven't seen, I'm not familiar with, and I don't believe I'm -- should respond, relative to providing any input on a document I'm not aware of.

BY MR. HOPPER:

Q. But if I told you that this future survey from the Michigan Monitoring Report indicates that five million young people, younger than the age of 18, will eventually die of tobacco-related illnesses at current smoking rates, would that surprise you?

MR. BEACH: Objection to the form of that question.

You can answer it, if you can.

THE WITNESS: I cannot respond and will not respond to the article you keep referencing, because I have not had the opportunity to read and do not know that article.

//

BY MR. HOPPER:

Q. You testified earlier that you don't know, has been your answer over and over, about whether or not smoking causes cancer. Is that correct?

A. I am -- I am -- yes.

Q. And I want to be clear. When you say you don't know, what do you mean by you don't know?

A. Just that. I am well aware that there are those that have a strong opinion on that issue, one way or the other, perhaps. I am simply saying I am not a doctor, I am not a scientist, and from my own personal awareness, observations, et cetera, I do not know.

Q. Well you are not an auto mechanic, but do you know whether or not, that if you don't change the brake pads in your car and you don't have any brakes, that you're going to crash into something if you're without brakes? Do you have to be a mechanic to know that?

A. I don't --

MR. BEACH: Objection to the form of that question.

BY MR. HOPPER:

Q. Do you know?

A. I don't believe that's a relevant comparison of the question.

Q. Well I'm not asking you whether it's a relevant comparison. I'm asking you whether or not, simply because you're not an auto mechanic, if your brakes aren't working correctly, do you have to be an auto mechanic to believe you're going to crash into something?

A. I don't have to be an auto mechanic to understand that there's something wrong with my car, but I'd probably have to be an auto mechanic to know there was a brake pad, as you referenced, that was the problem.

Q. May be true.

A. All right? So, as I have said before, I understand and accept what the health risks are of smoking. What I cannot tell anybody is, is whether I know it causes this or it doesn't cause any given disease.

Q. And that's because, really, you don't believe that -- the real issue here is you don't believe it, correct?

A. I'm not going to allow you to put words in my mouth on that. I have said I don't know. That is the best and most candid -- honest answer I can give. And we can go over and over and over about it again. That is my response.

Q. If you're sitting in your house one night by yourself and someone walks into your house, you're watching TV, and they put a gun to your head and tell you they're going to blow your brains out, and you look back and tell them you don't believe in guns, what do you think the response is going to be?

MR. BEACH: Objection. That's not a question.

MR. HOPPER: It's certainly a question. It's a hypothetical question, and I'm interested in the witness' response.

BY MR. HOPPER:

Q. Just because you don't believe in guns doesn't believe your brains are not going to be splattered all over the place, does it?

A. I don't -- I don't understand what you're asking or where you're going with that --

Q. I'm asking you, based logically on the question --

A. I don't feel there's a correlation there for me to follow or answer. I'm sorry.

I have given you the answer that is the best answer I can give: I do not know. It is not I believe one thing or the other, I don't believe one thing or the other, it is I don't know.

What I do know is, is I believe that there are risks associated with this product. I believe it is an adult choice. I believe that they should have the right to make that choice. I believe that there are 45 million to 40 whatever million that do. And I believe that they should have that choice and that this is a legal product for them to consume. I believe the people are viably aware of what the risks are of smoking this product, and they can't buy a pack or see a piece of advertisement that doesn't reinforce that to them very explicitly. But I can't tell you that I

know whether or not cigarette smoking causes this or this. I don't know.

MR. GOTTLIEB: Move to strike as nonresponsive.

MR. BEACH: It was entirely responsive.

You know, let me make an observation for the record --

MR. HOPPER: No, let me finish my question. No observations for the record. If you have an objection to make, under the Rules of Evidence, that's what you're allowed to do under the Rules of Evidence. Observations are not included in the Rules of Evidence.

MR. BEACH: Let's go off the record for just a minute, if that's all right with you.

MR. HOPPER: I have one last question to ask and I'm going to be finished.

MR. BEACH: Okay. Fair enough.

MR. HOPPER: Does that satisfy you?

MR. BEACH: Yeah.

MR. HOPPER: We're back on the record.

BY MR. HOPPER:

Q. You say you don't know --

A. That's correct.

Q. -- what cigarettes cause or don't cause. You're not a scientist, you're not a doctor, et cetera, et cetera.

If at some point you find out in the future and you're convinced that the data you see or that the opinion that you receive convinces you that it does cause cancer and lung disease and heart disease and tragically kills 400,000 people a year, do you have any thoughts or feelings about your 20-plus year career marketing these products to the American public and the rest of the world?

MR. BEACH: Objection to the form of the question.

BY MR. HOPPER:

Q. As to how you're going to feel when you discover that, if you're convinced?

A. As long -- I can't tell you that my -- that as once -- depending on how that was conclusively shown or demonstrated, as you are assuming, that would first have to take place. All right?

But this is a legal product that nobody is forced to buy. They have the opportunity to choose whether or not they smoke or don't smoke. And as long as it is a legal product, as long as they are aware of the risks of this product, then I would have to say that I would continue, yes, to -- to be involved with this company, et cetera, of a legal product.

Q. Well, Mr. Pennell, I understand what you're saying. But I'm hard-pressed to understand, and I would ask you how you would explain the fact, that prevolitional young people do not have the right to choose or not apprised of all the facts or knowledge about a product when they end up with it. How can you explain that, under your right to choose --

MR. BEACH: Objection to the form

of that.

MR. HOPPER: -- under your right to choose theory?

MR. BEACH: Objection to the form of that question. If you have any idea what he's asking.

THE WITNESS: I have no idea what you're asking.

BY MR. HOPPER:

Q. What I'm asking you is, is that kids, at a certain age, have no basis and no knowledge and no understanding of choosing and a free right to choose. They're prevolitional. And I'm asking you how you can explain that --

A. I still don't understand your question.

Q. -- under your so-called theory?

You don't understand what that means? You don't understand that your ten-year-old son may not know and understand and have knowledge of how everything works, and that he's prevolitional? He doesn't have the knowledge or the basis of that knowledge to inform his right to choose, and probably doesn't even know he has a right to choose? You don't understand that?

MR. BEACH: Objection to the form of that question.

THE WITNESS: I believe my ten-year old son does understand the risks involved with smoking. I believe he knows it is an adult decision to make. And I believe that he is informed on that, whether it be -- irregardless of me, but just from the society in general.

BY MR. HOPPER:

Q. But you wouldn't argue that there are a lot out there that are prevolitional, that don't know, would you?

A. I can't -- I can't argue that one way or the other.

MR. HOPPER: Okay. I have no further questions at this time and we continue to reserve our right to recall.

MR. GOTTLIEB: I just have a few questions.

EXAMINATION

BY MR. GOTTLIEB:

Q. You just mentioned now that you think it's appropriate to market cigarettes, as long as smokers know and are aware of the risks. Would you agree that, if a tobacco company develops evidence that the risks of smoking are significant, and that that evidence is not known to the general public, to the consumers, that the tobacco company should reveal that risk to the consumers?

MR. BEACH: Objection to the form of the question. If you can answer it.

THE WITNESS: I feel like you're asking different things there. Could you have her read it back or ask it --

MR. GOTTLIEB: Let me rephrase it.

BY MR. GOTTLIEB:

Q. And, again, you have stated that, as long as people know the risks, you think it's okay to market cigarettes. And that's your position; isn't

that correct?

A. I'd like to -- let's stop there and let me clarify that.

Q. Okay.

A. I think the point that I made was, is that, as long as this is a legal product, as long as consumers are aware of the risks --

Q. That's what I was trying to get at.

A. Okay. But we left out the legal product aspect of it. I think that's a key component.

Q. You need both.

As long as consumers are aware of the risks is the component that I'd like to address right now. There are two parts. It's a given it's a legal product. It's a fact.

My question is, let us say RJR became aware of risks which the general public was not aware of. Do you think it has some obligation to the general public to reveal those risks to the general public?

MR. BEACH: Are you asking him a legal question?

MR. GOTTLIEB: No. He made the statement -- I'm talking ethical question here, really.

MR. BEACH: I just wanted to clarify what you're asking him.

Go ahead and answer it, if you can.

THE WITNESS: If there -- if there is -- if there is conclusive data relative to the risks of smoking, then, yes, it would be preferable for me, from a personal standpoint, that that information be provided.

BY MR. GOTTLIEB:

Q. And if the data was not conclusive but suggestive, do you believe that such data should not be provided?

A. Well, I can't answer that. I mean, I don't know where I would draw the line on suggestive versus conclusive. But there is a point at which it is just suggestive, it may or may not be, and that you believe that it is. I think, that at the point that you believe that it is, that from a personal standpoint, then, yes, I think that that information should be provided.

Q. So, for example, if a -- if RJR had done some research and determined that nicotine was addictive, would it have some obligation to tell that to the general public?

MR. BEACH: Object to the form of the question.

You can answer it, if you can.

MR. GOTTLIEB: I knew you'd object to some of my questions.

MR. BEACH: It's getting late in the day.

THE WITNESS: If -- if this -- if R.J. Reynolds had the data that would suggest that cigarette smoking is addictive and that it was their belief that that's what that data said, then I -- then I personally believe that information should be provided.

BY MR. GOTTLIEB:

Q. Do you know whether RJR uses ammonia as an ingredient in any of its cigarettes?

A. I -- I can't recall whether it does or it doesn't.

Q. Do you know whether RJR uses acid aldehyde as an ingredient in any of its cigarettes?

A. I have no idea. I'm not familiar with that term.

Q. Do you know what effect, if any, ammonia has upon smokers when ammonia is added to cigarettes?

A. No, sir, I don't.

Q. Have you heard of any reports that ammonia increases the effect of the nicotine --

A. No, sir.

Q. -- on smokers?

A. No, sir.

Q. So, I can state -- it is clear to say -- for me to say -- strike that.

It is safe for me to say that nobody from RJR's research department or product development department ever briefed you regarding the use of ammonia or acid aldehyde in RJR products?

A. What I'm -- what I'm telling you is the best of my recollection. I cannot recall any time that anybody has had that discussion with me.

Q. Do you know whether RJR products -- whether all RJR products manufactured today include reconstituted tobacco?

MR. GOTTLIEB: Well, he already stated that some did. That was your earlier testimony.

MR. BEACH: Let me obviously iterate here that his response to this question is going to contain confidential business information so ...

MR. GOTTLIEB: That's been stated many times --

MR. BEACH: I understand, I just want to be sure.

THE WITNESS: I don't know whether reconstituted sheet is in every brand and brand style that we make, no.

BY MR. GOTTLIEB:

Q. Among those brands that you're familiar with, do you know of any that does not include reconstituted tobacco?

A. I can state it this way: Of the brands that I am accountable for, and therefore defining "familiar" that way, in some capacity there is reconstituted sheet in each of those products.

Q. Has there been reconstituted sheets in those products for as long as you have been with RJR, to your knowledge?

A. I can't answer that. I have no idea what has been in them for -- since I've been with the company the 18 years.

Q. Were you ever aware of any RJR product that did not have reconstituted tobacco in it?

A. To the best of my recollection, Camel may not have had, in the Camel regular non-filter, reconstituted sheet in it then, and it may not now. I don't know.

Q. You don't know whether it has it or not?

A. I don't.

Q. But you're not aware of any brand that you're sure does not have any; is that correct?

A. That's correct.

Q. Do you know whether RJR has, by itself or through outside sources, done any research on whether smoking cigarettes causes lung cancer?

A. I'm not aware of that, no, sir.

Q. Has there been any time in which RJR has briefed either you or the marketing department regarding the issue of whether smoking cigarettes causes cancer?

A. Not that I can recall.

Q. Have you been sent a memo to you regarding that subject?

A. On whether it causes cancer?

Q. Yes.

A. Not that I recall if anybody sent a memo to me on --

Q. Are you aware of any official company position regarding whether or not it causes cancer?

MR. BEACH: Are you talking about today or at what point in time?

BY MR. GOTTLIEB:

Q. At any time in your career with RJR, are you aware of an official company position regarding whether or not smoking cigarettes is known to cause lung cancer.

A. I don't know how to define it official or not, but -- I don't know whether it would fall into official or not, but I think the company's perspective is, is that there are associated risks with smoking. But I don't recall them ever having said that they believed or didn't believe that it caused cancer.

Q. So, in other words, as far as you know, the company position is the same as your position?

A. I think it is, on the associated risks of smoking -- with smoking, but I can't speak to the company's full position on the ongoing debate on my "I don't know".

MR. GOTTLIEB: I have no further questions. I'd like to thank you for coming here today and I hope that you can enjoy the rest of the evening with your son.

THE WITNESS: Thank you.

(DEPOSITION CONCLUDED AT 5:52 P.M.)

(SIGNATURE RESERVED)

C E R T I F I C A T E

I, George C. Pennell, do hereby certify that I have read and understand the foregoing transcript and believe it to be a true, accurate, and complete transcript of my testimony, subject to the attached list of changes, if any.

Pennell

George C.

This deposition was signed in my presence by _____, on the _____ day of _____, 1997.

Notary Public

My commission expires:

Waga & SpinelliFour Becker Farm Road
Roseland, New Jersey 07068

E R R A T A S H E E T

RE: Steven R. Arch, et al. v. The American Tobacco Company, et al.
DEPOSITION OF: George C. Pennell

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(LNR)

STATE OF NORTH CAROLINA COUNTY OF YADKIN
CERTIFICATE

I, Linda N. Russell, a Notary Public in and for the State of North Carolina, do hereby certify that there came before me on Wednesday, May 21, 1997, the person hereinbefore named, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge concerning the matters in controversy in this cause; that the witness was thereupon examined under oath, the examination reduced to typewriting under my

direction, and the deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have hereto set my hand and affixed my official notarial seal, this the 26th day of May 1997.

Russell, Notary Public

My Commission Expires 8/25/97

Linda N.